United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

77-7125 77-7126

United States Court of Appeals For the Second Circuit

DOROTHY L. COLE, LOIS H. ZISOOK, HARRY W. VOEGE and ANNA MAY TUNMORE, as Trustees, SAMUEL GREENFIELD FUND, INC. and HAROLD STILLER and MILDRED STILLER, as joint tenants,

Plaintiffs,

DOROTHY L. COLE, HARRY W. VOEGE, and ANNA MAY TUNMORE, as Trustees, and HAROLD STILLER and MILDRED STILLER, as joint tenants,

Plaintiffs-Appellants,

v.

SCHENLEY INDUSTRIES, INC., GLEN ALDEN CORPORATION, RAPID-AMERICAN CORPORATION, ISIDORE A. BECKER, BERNARD GOLDBERG, PAUL A. JOHNSTON, DAVID A. CHERNOW, WALTER O. HEINZE, HOWARD FELDMAN, MILO B. HOPKINS, RUSSELL G. SMITH, ALBERT N. GREENFIELD, MESHULAM RIKLIS, GLEN ALDEN SUBSIDIARY, INC., P.J. CLIFFORD, W.P. JOHNSON, S. KITTAY, M.L. MENDELL, L.C. LANE, G.H. PERKINS and B. DENMARK,

Defendants-Appellees.

JOINT APPENDIX
(Volume I—Pages A1-A323)

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Attorney for Appellant
Dorothy L. Cole
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New York, N.Y. 10022

UNITED STATES COURT OF APPEALS
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APR 27 1977
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JOINT APPENDIX

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DOCKET ENTRIES

A 001

JUDGE OWEN -- JUDGE CARTER

OWEN

CIVIL DOCKET

UNITED STATES DISTRICT COURT

71 CIV. 1028

11/3/71 CONSOLIDATED FOR ALL PURPOSES. Ryan, J. Jury demand date: All purposes

8/10/71 Consolidated for ~~Pretrial Proceedings only~~ ~~with 71-1042, 71-1284, 71-1936.~~

D. C. Form No. 106 Rev.

TITLE OF CASE

CLASS ACTION

DOROTHY L. COLE, personally and on behalf of the class similarly situated,

Plaintiff,

-against-

SCHENLEY INDUSTRIES, INC., GLEN ALDEN CORPORATION, RAPID-AMERICAN CORPORATION, ISIDORE A. BECKER, BERNARD GOLDBERG, PAUL A. JOHNSTON, DAVID A CHERNOW, WALTER O. HEINZE, HOWARD FELDMAN, MILO B. HOPKINS, RUSSELL G. SMITH, BERNHARDT DENMARK, ALBERT N. GREENFIELD and MESHULAM RIKLIS,

Defendants.

12-16-71

ATTORNEYS

For plaintiff:

HERMAN COHEN (Address changed to ~~110 East 42nd St. N.Y.C. N.Y. 10017~~ (160 Park Ave, N.Y. 10022 486-1700

~~3/22/72 Address Changed to: One New York Plaza, NY 10004 483-1727~~

Greenbaum Wolff & Ernst (Dade &Co.) 437 Mad.Ave., NYC 10022--751-8080

Greenbaum Wolff & Ernst (Dade & CO.) 437 Madison Ave., NYC 10022 758 4010

For defendant:

Simpson, Thacher & Bartlett (for defts. Becker, Goldberg, Johnston, Chernow, Heinze, Feldman, Hopkins, Smith & Greenfield, One Battery Park Plaza, NY 10004 483-9000

Fried, Frank, Harris, Shriver & Jacibson (for Glen Alden) 120 Broadway NY 10005 WO 4-6500

~~Milton Seasonwein (for Schenley Industries~~ ~~888 Seventh Ave. NY~~

Rubin Wachtel Baum & Levin (for Riklis, Rapid American) 598 Madison Ave. NY 10022 PL 9-2700

MILTON B. SEASONWEIN 888 Seventh Ave., NYC 10019 ~~Deft.~~ Schenley Industries, Inc.

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk		3-5-71	H Cohen	15 —	15 —
			3-5-71	Postage	5 —	5 —
J.S. 6 mailed 2-2-77	Marshal		3/24/71	Fees		
Basis of Action: ~~VIOL S.E.C ACT. 1934~~	Docket fee					
$135,000,000	Witness fees					
Action arose at:	Depositions					

JUDGE TENNEY 71 CIV. 1028

DATE	PROCEEDINGS	Date Order or Judgment Noted
Mar8-71	Filed Complaint. Issued Summons.	
Mar8-71	Filed Affidavit for Issuance of 30 Day Summons.	
Mar.22-71	Filed Notice of change of address of Herman Odell to One New York Plaza, NY 10004	
Apr.7-71	Filed Order to Show Cause re: Consolidate Ret. 4/20/71. (Also in 71 Civ. 1042).	
Apr.7-71	Filed Defts'.Memorandum in support of motion to consolidate. "	
Apr.16-71	Filed Answering affidavit of Charles Trymin.	
Apr.16-71	Filed Memorandum of Veege pltffs in opposition to defts' motion to consolidate Ret. 4-20-71	
Apr.19-71	Filed pltff's affidavit in support of consolidation and requesting designation of lead counsel.	
Apr.26-71	Filed Memorandum of Pltf. Dorothy L.Cole in opposition to consolidation(& in 71 Civ.1042,1284&1536)	
Jun 11-71	Filed Reply Memorandum of Pltf. Cole.	"
Jun11-71	Filed Supplemental and Reply Affidavit of Charles Trymin.	"
Jun 11-71	Filed Rejoinder Affidavit of Abraham L. Pomerantz.	
Jun 14-71	Filed OPINION #37719. Defendants' motion for consolidation is granted. SUBMIT ORDER ON FIVE DAYS' NOTICE. So ordered.Motley, J.(mailed notice).	"
Jun.18-71	Filed pltff's Affdvt. and notice of motion for reargument of the motion for consolidation. Ret. 6-29-71 (pltff. Samuel Greenfield Fund)	
Jun.18-71	Filed Appendix to affdvf. in support of motion for reargument	
Jun 24-71	Filed Notice of Motion re: Rearumgne.t Ret. 6/29/71. (Also in 71 Civ. 1042,71Civ.1284, and 71 Civ. 1536).	
Jun.28-71	Filed Herman Odell, Affdvt. for pltff. in opposition to reargument. (Also in 71Civ1042,71Civ1284, and 71 Civ 1536	
Jun.28-71	Filed Herman Odell, Affdvt. for pltff. in opposition to Cross-Motion For Reargument.(Filed in 71 Civ 1042, 71 Civ 1284 and 71 Civ 1536)	
Jun 28-71	Filed Defendants' Memorandum in opposition to plaintiffs' motion for reargument.	
Aug.10-71	Filed MEMO.END. on motion papers filed 6/24/71. Motion for reargument denied. So ordered. Motley,J.	
Aug.10-71	Filed MEMO.END. on motion papers filed 6/18/71. Motion for reargument denied. So ordered. Motley, J.	
Aug.10-71	Filed Order of consolidation. ORDERED that ALL PRETRIAL PROCEEDINGS in each of the actions, are consolidated; ordered that Herman Odell of 1 New York Plaza,NY 10004 is designated as lead counsel, to supervise and coordinate all pretrial proceedings on behalf of all plaintiffs,etc.etc. Motley, J.(mailed notice).	
Sep.8-71	Filed pltffs' notice of motion Re; Class Action Ret.9-21-71	
Sep.8-71	Filed pltffs' Memorandum in support of motion	
Sept.9-71	Filed Notice of Depositions of Baer,Stearns & Co. by Alan C.Greenberg, Allen & Co.Inc. by Stanley S. Shuman, etc.	
Sep. 10-71	Filed stip and order that all pre-trial proceedings in Action No. 5 are consolidated with pre-trial proceedings in Action Nos. 1 through 4 and the parties to Action No. 5 will be bound, as of the date of the filing of this stip. 2 any defts who have been served in any of the actions will serve answers to the complaints 30 days after the date of filing of this stip. etc. 3. All discovery proceedings commenced in Action Nos. 1 through 5 will be deemed withdrawn. McGohey J.	
Sep. 14-71	Filed pltffs' Amended notice to take deposition of the following witnesses as indicated.	
Sep.20-71	Filed stipulation adjourning motion now ret.9/21/71 to 9/28/71. (also in 4 related cases).	
Sep.24-71	Filed Defts'.Memorandum in opposition to motion to declare as class actions. (Also in 71 Civ. 1042, 71 Civ. 1284, 71 Civ. 1536 and 71 Civ. 2605.)	
Sep.27-71	Filed summons with marshal's ret. SERVED: Russell G.Smith on 3/10/71 Walter O. Heinze UNABLE TO SERVE. Albert N. Greenfield UNABLE TO SERVE. Albert N. Greenfield by Larry, his son, on 6/9/71.	
Apr 2-71	Filed stip & order extending the time to answer to 4-20-71.	

(continued on next page)

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A 003

JUDGE TENNEY

JUDGE OWEN

D. C. 110 Rev. Civil Docket Continuation

71 CIVIL 1028

DATE	PROCEEDINGS	Date Ord Judgment
Sep.27-71	Filed summons with marshal's ret. SERVED:	
	Schenley Industries, Inc. by Milton Seasonwein on 3/11/71.	
	" Isidore A. Becker, by Milton Seasonwein, on 3/11/71.	
	David A. Chernow " " "	
	Bernard Goldberg " " "	
	Howard L. Feldman " " "	
	Glen Alden Corp. by Stuart Aaron, Secy. on 3/11/71.	
	Paul A. Johnston by Stuart Aaron on 3/24/71.	
	Milo R. Hopkins by Mr. Seasonwein on 3/23/71.	
	Bernardt Dermark by Jon Shelley on 3/17/71.	
	Rapid-American Corp. by Hain Bernstein, V.P. on 3/12/71.	
	Neshulam Riklis by Hain Bernstein, V.P. on 3/12/71.	
Oct.1-71	Filed deft's Affdvt and notice of motion to QuaahSubpoenas Ret. 10-7-71	
Oct.1-71	Filed defts' Memorandum in support of motion	
Oct.6-71	Filed Affidavits in opposition to application for protective order. (and in 4 related	
Oct.6-71	Filed Pltfs'.Memorandum in opposition to defts'.application for protective order.	cas
Oct.12-71	Filed Response by Glen Alden Corp. and Schenley Industries, Inc. to Request for Production of Documents. (in this and 4 related cases).	
Nov.3-71	Filed Notice of Settlement and Order. The within actions are consolidated for ALL PURPOSES, including trial; within 10 days of filing this order plaintiffs shall file a consolidated amended complaint; each defendant served will move or answer the consolidated amended complaint within 10 days of service of complaint; any pre-trial discovery proceedings previously had herein are deemed to have been had in the consolidated action,etc.etc. Ryan, J.(mailed notice).	
Nov.4-71	Filed Notice of motion re: Produce for Inspect. Ret. 11/11/71, together with affidavit and exhibit.	
Nov.5-71	Filed MEMO.END. on motion filed 9/8/71 - Order and counter order submitted, and order signed this day. Ryan, J.	
Nov. 11-71	Filed MEMO.END. on motion papers filed 11/1/71. Motion consented to. Order submitted and signed this date. Brieant, J.	
Nov. 11-71	Filed (in court) Order that defts. Glen Alden Corp. and Schenley Industries, Inc. shall produce as indicated. Brieant, J.(mailed notice).	
Nov. 15-71	Filed Pltfs'.Consolidated Amended Complaint, and demand for trialby jury.	
Nov. 16-71	Filed Notice of Depositions, and issued subpoenas.	
Nov.30-71	Filed ANSWER of defts. Isidore A.Becker Bernard Goldberg, Paul A. Johnston, David A.Cernow, etc. to Amended Complaint.	C.&B
Dec.1-71	Filed ANSWER of Glen Alden Corp. to consolidated amended complaint.	FFHS&J
Dec.3-71	Filed ANSWER of Schenley Industries, Inc. to amended complaint.	MS
Dec.9-71	Filed ANSWER of deft.Neshulam Riklis. to consolidated amended complaint.	RW&L
Dec.9-71	Filed ANSWER of deft. Rapid-American Corp. to consolidated Amended Complaint.	"
	~~XXXX

JUDGE CARTER

DATE	PROCEEDINGS	Date Order or Judgment Noted
Ded.22-71	Filed MEMO.END. on motion papers filed 10/1/71 Defts'.motion for an order quashing the subpoenas served upon certain witnesses, whose names appear herein and vacating the notice of deposition of these witnesses, is granted FRCP 26(b) provides a mandate for procedure which has been short-circuited here. This we cinot permit. So ordered. Cooper, J.	
Dec.23-71	Filed Protective Order and Stipulation that books, records and other papers to be produced, and the testimony to be given, by any deft. or witness, or any information contained therein, in response to any discovery procedures , instituted by pltffs', will be accorded confidential treatment and will not be disclosed or caused to be disclosed by pltffs', their counsel, their accountants, or any other person who is associated with them or any one of them, etc, Croake,J.	
Dec 28 71	Filed Notice of Motion. Re: ~~Protective Order ret. 1/13/71.~~ (by pltff)	
Dec 28 71	Filed Notice of Motion. Re: Inspection ret. 1/13/71. (by pltff).	
L1/3/72	Filed Notice of Motion. Re: Compel. Answer. ret. 1/13/72. by Pltff.	
1/3/72	Filed Memo. in support of pltffs' application under FRCP rule 37.	
1/5/72	FiledMemo in support of pltffs voege and Tunmore's ~~XXXXXXXXXXX~~,etc/	
Jan.10-72	Filed Defendants' Memorandum in opposition to Plaintiffs' Class Action Motion.	
Jan.10-72	Filed Defendants' Preliminary Memorandum in opposition to motion to intervene.	
Jan 11/72	Filed Deft. Glen Alden Corp., Notice of Depositon of Maurice Cann.	
Jan 11/72	Filed Deft. Glen Alden Corp. Notice of Deposition of Dorothy L.Cole,et al.	
Jan.12-72	Filed Defendants' Memorandum in opposition to Plaintiffs' motion for protective order.	
Jan.12-72	Filed Memorandum of Defts. Glen Alden Corp. and Schenley Industries,Inc. in opposition to pltf's.motion to require production of documents.	
Jan.12-72	Filed Memorandum in opposition to Pltfs'.application to compel a witness to answer~~XXXXXXXXXXXXXXX~~/ certain questions.	
Jan 13/72	Filed Memo. End. on Motion Paper dated 12/28/72. Re: Motion withdrawn So Ordered. Weinfeld J. ~~XXXXXXXXXXXXXX

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71 Civil 1028

DOROTHY L. COLE ETC, VS. SCHENLEY INDUSTRIES, INC. ET-AL

Carter

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order or Judgment Noted
DEC11-72	Filed Transcript of Record of Proceedings, dated, Sept 8th, 1972.	
May 25-73	Filed Memorandum in opposition to a proposed consolidation order of pltf. Cole and in support of a proposed order of Pltf. Samuel Greenfield Fund, Inc. related c	
May 25-73	Filed Additional Affidavit on Reargument.	"
May 25-73	Filed Deposition of Ben Grais.	
May 25-73	Filed Defendants' Memorandum in support of Proposed Order.	
May 25-73	Filed Plaintiffs' Reply Memorandum.	
May 25-73	Filed Defendants' Rebuttal Memorandum in opposition to motion to declare one or more of these actions class actions.	"
May 25-73	Filed (incourt 1/11/72) Reply Memorandum of Pltfs. Voogs and Tunmore.	
May 25-73	Filed Reply Memorandum to Defendants' Supplemental Memorandum.	
May25-73	Filed Defendants' Supplemental Memorandum in opposition to Pltfs'. Class action motion.	"
May 25-73	Filed Pltfs'. Reply Memorandum in support of Definition of Classes.	
May 25-73	Filed OPINION #39.99. (in this and four related actions 71 Civ. 1042, 71 Civ. 1234, 71 Civ. 1536 a 1 71 Civ. 2605. *** The Court is also satisfied the common questions prev il over individual questions and that a class action is superior to other methods for adjudication of the controversy; Re; Costs of Notice. Pltfs. request that the Court hold an evidentiary hearing directed to the allocation of the costs of notice to class members under Rule 23 (c)(2), urging that such a hearing would demonstrate the apparent merit of pltfs' claims and that such a demonstration would justify imposition of the costs of notice entirely or substantially on defendants - Eisen III requires rejection of plaintiffs' argument in this respect. Pltfs. must bear the costs of notice for the present, subject to their ultimate taxation in accordance with such orders as may be entered upon finaldisposition of the action. MOTIONS FOR INTERVENTION Mr. Grais' motion is granted. etc. The motion of Mr. and Mrs. Hughes to intervene is granted. SETTLE ORDER ON NOTICE. - WEINFELD, J. - (mailed notice).	
Oct.3,73	Filed Notice of Motion and Affidavit for an order extending time, ret. 10/12/73 1505	
Oct.11,73	Filed Defts.Beck,Golberg,Johnston,Chermow,Heinze,Feldman,Hopkins Smith&Greenfield Affidavit of Service.	
Nov-2-73	Filed deft's (Beck and others) affavt. in response to pltff's motion seeking 90 day extension to complete discovery.	
Nov-2-73	Filed deft's (Beck, Golberg, Johnston, Chermow, Heinze, etal.) affavt. in response to pltff's motion seeking extension for discovery.	
Nov-2-73	Filed memo endorsed on pltff's motion (copy of motion) for extension of time to complete discovery: Motion granted, with extension of time to complete discovery applicable to plaintiff and defendants. So ordered. - Carter,J. (m/n)	
May 29-73	PRE-TRIAL CONFERENCE HELD BY Carter, J.	
Dec 12-73	PRE-TRIAL CONFERENCE HELD BY Mag. J. Schreiber	
Feb- 6-74	Filed order that subject to the provisions of FRCP 23(c)(2) the within action shall be maintained as a class action by the separate classes indicated herein and designating representatives of the classes I and II. The complaints in intervention of Walter J. Hughes and Mary M. Hughes, and Ben Grais are hereby dismissed without cost and without prejudice to their respective right to continue as members of class I. Deft. Schenley and its agents having made available to lead counsel for pltfs' all records from which the names and addresses of members of the class may be ascertained, pltfs' representatives shall extract from such records the names and addresses of all persons who were the holders of Schenley Common and Preferred shares as of the close of business on 2-24-71 in form which will permit defendants to review such names and addresses prior to mailing. Notice to first class by 3-1-74. Notice to holders of Schenley	

continued next page

E

Dorothy L. Cole, etal. vs. Schenley Industries, Inc., etal.

71 Civ 1026 page JUDGE OWEN Judge Carter

DATE	PROCEEDINGS	Date Order or Judgment Noted
Feb-6-74	Order ---continued-----	
	by 3-1-74 and directing procedure of mailing of notice, etc.	
	On March 1, 1974, plaintiffs shall file an amendment to the consolidated	
	complaint confirming its class action allegations to this order. Except	
	as otherwise provided herein, plaintiffs' motion pursuant to Rule 23 is denied.	
	Weinfeld, J. m/n	
Mar-20-74	Filed plaintiff's affidavit of service in accordance with paragraph 2 of the order	
	dated Mar-11-74 of Judge Weinfeld.	
Apr-10-74	Filed notice of appearance by plaintiff Dade & Co.	GW&E
Mar 13.74	Filed Stip & Order that the time for pltffs. to file an amendment #1 to the	
	Consolidated Amended Complaint is extended to 4/4/74. Owen J.	
Mar 15.74	Filed Amendment #1 to Consolidated Amended Complaint, Pltffs. request Jury.	
Mar 22.74	Filed Notice of James O. Mooney & Bertha A. Money to be excluded from the	
	Class of pltffs. in this action.	
2/1/74	Pre Trial conference held by Schreeber.	
3/21/74	Pre Trial Conference held by Schrieber.	
3/28/74	Pre Trial Conference held by Schreiner.	
Apr 17.74	Filed Proposed Intervenors Notice of Motion, Re: Intervene. ret. 4/26/74.	
4/19/74	[illegible]	
Apr. 29-74	Filed stip & order adjourning motion to intervene to 5-10-74--Owen, J.	
May 8.74	Filed Pltffs. Memorandum in opposition to Petition for intervention.	
5-29-74	[illegible]	
6-26-74	PRE-TRIAL CONFERENCE HELD BY [illegible]	
May 24.74	Filed Proposed Intervenors Affdvt in support of Motion to Intervene and	
	~~Memorandum of Law~~ ~~PRE-TRIAL CONFERENCE HELD BY~~	
Jul 9.74	Filed Memo. End. on motion dted 4/17/74. The motions are denied. Independent Investor	
	Protective League has no standing since Benjamin Arac acknowledges that	
	presetn counsel for pltff. has represented 10 cases with ability & diligence up	
	to this point.... and no compelling reason for intervention is proposed,	
	there is no basis in law on the exercise of discretion for his entry	
	into this action. So Ordered Owen J. (mailed notice)	
Jul 24.74	Filed Pltff. Dade & Co. Notice of Appearance.	
Jul 30.74	Filed Proposed Intervenors Notice of Appeal from order denying motion to	
	intervene. (mailed notice)	
7-15-74	~~PRE-TRIAL CONFERENCE HELD BY~~ [illegible]	
Aug 2.74	Filed Notice of Appearance of Charles Brynin for Mrs. Marion Boyd a member of	
	Class II	
Aug 29.74	Filed Notice of appearance of Bader & Bader for Benjamin Arac a member of	
	a Class.	
Sep 5.74	Filed True Copy of USCA Stip. that the appeal is dismissed without costs	
	to either party. (mailed notice).	
10-7-74	PRE-TRIAL CONFERENCE HELD BY [illegible]	
9-27-74	PRE-TRIAL CONFERENCE HELD BY [illegible]	
11-12-74	[illegible]	
12-9-74	PRE-TRIAL CONFERENCE HELD BY [illegible]	
12-17-74	PRE-TRIAL CONFERENCE HELD BY [illegible]	
1-22-75	PRE-TRIAL CONFERENCE HELD BY [illegible]	
1-17-75	[illegible]	
1-27-75	PRE-TRIAL CONFERENCE HELD BY [illegible]	
1-31-75	PRE-TRIAL CONFERENCE HELD BY [illegible]	
7-14-75	PRE-TRIAL CONFERENCE HELD BY [illegible]	

FPI-LK-123463-LM 1945

Continued pg 7

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D. C. Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date C Judgme
7-15-75	PRE-TRIAL CONFERENCE HELD BY Schwartz	
7-16-75	PRE-TRIAL CONFERENCE HELD BY Schwartz	
7-[illegible]-75	PRE-TRIAL CONFERENCE HELD BY Schwartz	
[illegible]	Filed letter of Herman Odell re: changes of address etc, as indicated.	
10-10-75	Filed Consent Order that the Trial on the issue of liability is scheduled to begin on 10-14-75, and the parties by their counsel hereby consent to the entry of this order. Owen, J.	
10-23-75	Filed deposition of David A. Chernow dated 8-2-72.	
10-23-75	Filed deposition of David A. Chernow dated 7-6-75.	
10-23-75	Filed deposition of David A. Chernow dated 7-20-72.	
10-23-75	Filed Applicants Reply memorandum in support of application to intervene.	
10-23-75	Filed memorandum in support of Order submitted by pltffs.	
10-23-75	Filed Pltffs Reply memorandum.	
10-23-75	Filed defts memorandum in response to pltffs memorandum on discovery.	
10-23-75	Filed deposition of Maurice J. Cann on 1-31-72.	
~~10-23-75~~	~~Filed memorandum of~~ ~~deft Lion Biron Turnesmo, etc, as indicated.~~ IN CHRON	
	Trial begun and continued ~~Oct 14 -Oct 15 Oct 16- Oct 17, Oct 28, Oct 29,~~ and Oct 30, 1975. Trial concluded Oct. 30- 1975. Total Trial days 7 Decision reserved. Dorsa, R. Dep Clk.	
11-5-75	Filed defts Pre Trial memorandum	
11-5-75	Filed Trial memorandum of pltffs, ~~dated~~	
11-12-75	Filed transcript of record of proceedings, ~~dated~~ Oct, 14-15-16-17-28-29, 1975	
11-12-75	Filed transcript of record of proceedings, ~~dated~~ Oct, 30-1975	
12-10-75	Filed Pltffs'. post-trial memorandum.	
01-22-76	Filed Defts'. post-trial memorandum.	
01-22-76	Filed Defts'. (Johnston, Heinze, Smith, Hopkins & Greenfield) supplemental post-trial memorandum.	
02-13-76	Filed Pltffs'. reply to Defts'. post-trial memorandum.	
11-24-76	Filed opinion # 45395 ... Given the foregoing, Count 1 is dismissed for failure of proff. Count 2 was withdrawn upon the trial, Counts 4&5 were not pursued upon the trila and are dismissed, and Count 3 is dismissed upon the law and the facts. The foregoing constiturs the Court's findsins of fact and conclusions of law. Submit judgment on reasonsable notice. Owen J. m/n	
2-2-77	Filed final judgment Class action ... it is ordered that deft have judgment dismissing consolidated complaint on merits with costs. Owen J. Judgment ent. Clerk 2-3-77 m/n	
2-2-77	Filed notice of appeal to the USCA form the order dated ~~2-2-77 of J. Owen. m/n~~	
2-4-77	Filed notice of appeal to USCA from order of J. Owen dated 2-2-77. by pltf Cole. m/n	
2-6-77	Filed Notice of appeal to USCA from order of J. Owen dated 2-2-77 by pltf Brumbaugh	
2-15-77	Filed Notice of appeal to the USCA form the order dated 2-3-77 of J. Owen m/n	
6/13/77	Filed deft's reply memorandum	
6/11/77	Filed pre-trial order	
6/1/77	Filed affidavit of Abraham L. Pomerantz	
6/1/77	Filed deft's pre-trial memorandum	

A 098

CIVIL DOCKET

UNITED STATES DISTRICT COURT

JUDGE OWEN 71 CIV. 1042

8/10/71 Consolidated for Pretrial Proceedings only with 71-1028, 71,-1284 & 71-1536.

Jury demand date: 3/30/71 by Plaintiff.

TITLE OF CASE	ATTORNEYS
SOUTHERN DISTRICT OF NEW YORK ----------x HARRY WALTER VOEGE and ANNA MAY TUNMORE, as Trustees under the Last Will and Testament of HARRY W. VOEGE, Plaintiffs, -against- R. G. SMITH, M. B. HOPKINS, B. GOLDBERG, A. N. GREENFIELD, I. A. BECKER, B. DENMARK, W. O. HEINZE, P. A. JOHNSTON, D. A. CHERNOW, H. S. FELDMAN, P. J. CLIFFORD, W. P. JOHNSON, S. KITTAY, M. L. MENDELL, L. C. LANE, G. H. PERKINS, N. L. RIKLIS, SCHENLEY INDUSTRIES, INC., and GLEN ALDEN CORPORATION, Defendants. ----------x	For plaintiff: CHARLES TRYNIN 230 Park Avenue, N.Y.C.N.Y. 10017 For defendant:

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk			3/9/71	C. TRYNIN	15 —	
				3/12/71	U.S. Tr		15 —
J.S. 6 mailed 2-2-77	Marshal						
Basis of Action: VIOL. S.E.C. ACT. 1934	Docket fee						
$29,000,000	Witness fees						
Action arose at:	Depositions						

A 009

HARRY WALTER VOERGE ET-ANO VS. R.G. SMITH, ET-AL

71 CIV. 1042

DATE	PROCEEDINGS
Mar8-71	Filed Complaint. Issued Summons.
Mar8-71	Filed Notice of Assignment.
Mar.15-71	Filed Notice of Motion re: Temp. Inj. RET. Room 618 on 3/25/71 at 10:30 AM
Mar.15-71	Filed Plaintiffs' Memorandum in support of temporary relief.
Mar 24,71	Filed stip and order that the motion for a temporary injunction scheduled for 3-25-71 be adjourned to 4-8-71 Edelstein J.
Mar.30-71	Filed First Amendment and Supplement to complaint - and jury demand.
Mar.31-71	Filed plaintiffs NOTICE OF MOTION for an order pursuant to rule 23.
Apr.5-71	Filed stip and order that the motion for class action ret. 4-8-71 be adjourned to 4-22-71 Edelstein J.
Apr.5-71	Filed stip and order that the motion for a temporary injunction, ret. 4-8-71 be adjourned to 4-26-71 Edelstein J.
Apr.7-71	Filed Order to Show Cause re: Consolidate. Ret. 4/20/71. (Filed in 71 Civ. 1028).
Apr.7-71	Filed Defendants' Memorandum in support of motion to consolidate. "
Apr.19-71	Filed pltff's affidavit in support of consolidation and requesting designation of lead counsel.
JUn.3-71	Filed pltffs' affdvt. and Show Cause Order.Re; Permitting pltff. Relief. Ret. 6-8-71.
Jun.3-71	Filed pltffs' Memorandum of law application for a stay
Apr.26-71	Filed memorandum of Pltf.Dorothy L.Cole in opposition to consolidation (Filed in 71 Civ.1028)
Jun 11-71	Filed Reply Memorandum of Pltf. Cole. "
Jun 11-71	Filed Supplemental and Reply Affidavit of Charles Trynin. "
Jun 11-71	Filed Rejoinder Affidavit of Abraham L.Pomerantz. "
Jun 14-71	Filed OPINION #37719. Defendants' motion for consolidation is granted. SUBMIT ORDER ON FIVE DAYS' NOTICE. So ordered. Motley, J.(mailed notice).
Jun 14-71	Filed OPINION #37722. Lasker, J. The motion for a prelimihary injunction is denied. It is so ordered. (mailed notice).
Jun.17-71	Filed pltffs' affdvt. and notice of motion for Reargument. Ret.6-29-71
Jun.17-71	Filed pltffs' Memorandum in support of motion
Jun.18-71	Filed pltff. Samuel Greenfield Fund, Inc. affdvt. and notice of motion for reargument of the motion for consolidation, Ret. 6-29-71 (Filed in 71 Civ 1028)
Jun.18-71	Filed Appendix to affdvt. in support of motion for reargument.
Jun 15-71	Filed Notice of Appeal by Harry Walter Voege and Anna May Turnore, as Trustees of the Will of Harry W. Voege, (mailed copies).
Jun 24-71	Filed Notice of Motion re: Reargument Ret. 6/29/71 (Filed in 71 Civ. 1028).
Jun.28-71	Filed Herman Odell, Affdvt. for pltff. in opposition to reargument (Filed in 71 Civ 1028)
Jun.28-71	Filed Herman Odell, Affdvt. for pltff. in opposition to Cross Motion for Reargument. (Filed in 71 Civ 1028)
Jul 1-71	Filed Defts'. Memorandum in opposition to Plaintiffs' Motion for reargument.
Jun 29-71	Filed (in court) Pltfs'.Reply Memorandum in support of Pltfs'.motion forreargument.
Jun 3-71	Filed Affidavit of William J. Manning.
Jun 8-71	Filed (in court) Defts'.Memorandum in opposition to Pltfs'.motion for temp.inj.
Jun 8-71	Filed (in court) Affidavit of Stanley S. Shuman.
Jul 1-71	Filed Supplementary Affidavit of Charles Trynin.
Jul 1-71	Filed OPINION #37772. Lasker, J. The motion for reargument is denied. It is so ordered. (mailed notice).
Aug.10-71	Filed MEMO.END. on motion papers filed 6/24/71. Motion for reargument denied. So ordered. Motley, J.
Aug.10-71	Filed MEMO.END. on motion papers filed 6/18/71. Motion for reargument denied. So ordered.Motley,J.
Aug.10-71	Filed Order of consolidation. Ordered that ALL PRETRIAL PROCEEDINGS in each of the actions are consolidated; ordered that Herman Odell, New York Plaza,NY 10004, is designated as lead counsel,etc.Motley,J(mailed notice).

continued next page

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order or Judgment Noted
Sep.8-71	Filed pltffs' notice of motion Re; Class Action Ret. 9-21-71	
Sep.8-71	Filed pltffs' Memorandum in support of motion	
Sept.9-71	Filed Notice of taking Depositions of Baer, Stearns & Co. by Alan C.Greenberg, Allen & Co.Inc. by Stanley S. Shuman, etc.	
Sep. 10-71	Filed stip and order that all pre-trial proceedings in Action No. 5 are consolidated with pre-trial proceedings in Action Nos. 1 through 4 and the parties to Action No. 5 will be bound, as of the date of the filing of this stip. 2, any defts who have been served in any of the action will serve answers to the complaints 30 days after the date of filing of this stip., etc. 3,. All discovery proceedings commenced in Action Nos. 1 through 5 will be deemed withdrawn. McGohey J.	
Sep. 14-71	Filed pltffs' Amended notice to take depositions of the following witnesses as indicated.	
Sep.20-71	Filed stipulation adjourning motion now ret. 9/21/71 to 9/28/71. (Filed in 71 Civ. 1042).	XXXXX
Sep. 4-71	Filed Defendants' Memorandum in opposition to motion to declare as class actions. (Filed in 71 Civ. 1028).	
Oct.1-71	Filed defts' Affdvt. and notice of motion to Quash Subpoenas.Ret. 10-7-71	
Oct.1-71	Filed defts' Memorandum in support of motion	
Oct.6-71	Filed Affidavit in opposition to application for protective order (Filed in 71 Civ.1028).	
Oct.6-71	Filed Pltfs'.Memorandum in opposition to defts'.application for protective order.	"
Nov.5-71	Filed Memo Endorsed on motion filed 9-8-71-- Order and counter order submitted, and order signed this day. Ryan,J.	

DATE	PROCEEDINGS	Date Order or Judgment Noted
[illegible]-11-72	Filed Transcript of Record of Proceedings, dated, Sept 8th, 1972.	
[illegible] 25-73	Filed Memorandum in opposition to a proposed consolidation order of pltf. Cole and in support of a proposed order of Pltf. Samuel Greenfield Fund, Inc. related ca	"
[illegible] 25-73	Filed Additional Affidavit on Reargument.	
[illegible] 25-73	Filed Deposition of Ben Crais.	
[illegible] 25-73	Filed Defendants' Memorandum in support of Proposed Order.	
[illegible] 25-73	Filed Plaintiffs' Reply Memorandum.	
[illegible] 25-73	Filed Defendants' Rebuttal Memorandum in opposition to motion to declare one or more of these actions class actions.	"
[illegible] 25-73	Filed (incourt 1/11/72) Reply Memorandum of Pltfs.Voege and Tunmere.	
[illegible] 25-73	Filed Reply Memorandum to Defendants' Supplemental Memorandum.	
[illegible] 25-73	Filed Defendants' Supplemental Memorandum in opposition to Pltfs'.Class Action motion.	"
[illegible] 25-73	Filed Pltfs' Reply Memorandum in Support of Definition of Classes.	
[illegible] 25-73	Filed OPINION #39499. (in this and four related actions 71 Civ. 1042, 71 Civ. 1284, 71 Civ. 1536 and 71 Civ. 2605. The Court is also satisfied that common questions prevail over individual questions and that a class action is superior to other methods for adjudication of the controversy; Re; Costs of Notice. Pltfs. request that the Court hold an evidentiary hearing directed to the allocation of the costs of notice to class mem-rs under Rule 23 (c)(2), urging that such a hearing would demonstrate the apparent merit of pltfs' claims and that such a demonstration would justify imposition of the costs of notice entirely or substantially on defendants -- Given the requires rejection of plaintiffs' argument in this respect. Pltfs. must bear the costs of notice in the present, subject to their ultimate taxation in accordance with such orders as may be entered upon final disposition of the action. MOTIONS FOR INTERVENTION Mr. Crais' motion is granted, etc. The motion of Mr. and Mrs. Hughes to intervene is granted. SETTLE ORDER ON NOTICE. WEINFELD, J. (mailed notice).	

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71 Civ. 1042 Voege et ano vs. Smith et al

DATE	PROCEEDINGS	Date Order or Judgment Noted
Feb. 25-74	Mailed notice of reassignment.	
11-10-75	Filed transcript of record of proceedings, dated Oct. 14-15-16-17-28-29, 1975 (Filed in 71-1027)	
11-10-75	Filed transcript of record of proceedings, dated Oct. 30-1975 (Filed in 71-1025)	
12-09-75	Filed Pltffs', post-trial memorandum in the Voege Action.	
11-24-76	Filed opinion # 45395 ... Given the foregoing, Count 1 is dismissed for failure of proof, Count 2 was withdrawn upon the trial, Counts 475 were not pursued upon the trial and are dismissed, and Count 3 is dismissed upon the law and the facts. The foregoing constitutes the Court's findings of fact and conclusions of law. Submit judgment on reasonable notice. Owen J. m/n	
2-2-77	Filed final judgment Class action ... it is ordered that deft have judgment dismissing consolidated complaint on merits with costs. Owen J. Jedgment ent. Clerk 2-2-77 m/n	
3-2-77	Filed notice of appeal to the USCA form order of J. Owen dated 2-2-77 m/n	
4/16/71	Filed summons with marshall's return	
6/15/71	Filed notice of appeal from order of Judge Lasker dtd: 6/14/71	
4/1/77	Filed affidavit of John H.G. Bell	
4/1/77	Filed letter of Charles Trvin to Judge Motley dtd: 4/29/71	
4/1/77	Filed notice of reassignment to Judge Owen	
4/1/77	Filed letter of Charles Trvnin to Judge Lasker dtd: 6/8/71	
4/1/77	Filed plaintiff:s post-trial reply memorandum	

A 012

JUDGE OWEN

CIVIL DOCKET

UNITED STATES DISTRICT COURT

8/10/71 Consolidated for PRETRIAL PROCEEDINGS only with 71-1028,71-1042-71-1284-71-1536.by Pltff. 3-19-71

Jury demand date:

D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
71	For plaintiff: POMERANTZ LEVY HAUDEK & BLOCK 295 Madison Avenue, N.Y.C.N.Y. 10017
UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK ----------X GLASSIL GREENFIELD FUND, INC., Plaintiff, -against- SCOVILLE INDUSTRIES, INC., GLEN ALDEN CORPORATION, THEODORE A. BECKER, FURLAND COMPANY, DAVID A. CRONNON, HOWARD S. FELDMAN, BERNHARDT DENMARK, ROBERT H. GREENFIELD, KILO C. HOFFING, WALTER C. HEINZ, PAUL A. JOHNSTON, WINFIELD G. SMITH, and RAIN-AMERICAN CORPORATION, Defendants. ----------X	For defendant:

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk		3-19-71	Linsen R	15	
			3-23-71	Tuma		05
J.S. 6 mailed 2-2-77	Marshal					
Basis of Action: VIOL. S.E.C. ACT. 1934	Docket fee					
	Witness fees					
Action arose at:	Depositions					

A 013

SAMUEL GREENFIELD FUND, INC. VS. SCHENLEY INDUSTRIES, INC., et al

71 1284

DATE	PROCEEDINGS	Date Order or Judgment Noted
Mar19-71	Filed Complaint. IssuedSummons.	
Mar.23-71	Filed Notice of Motion re: Determine as Class Action. Ret. 4/6/71.	
Mar.23-71	Filed Plaintiff's Memorandum of Law in support of its motion for a class action determination.	
Apr.5-71	Filed stipulation that the motion for class action be adjourned from 4-6-71 to 4-20-71	
Apr.7-71	Filed Order to Show Cause re: Consolidate. Ret. 4/20/71. (Filed in 71 Civ. 1028).	
Apr.7-71	Filed Defendants' Memorandum in support of motion to consolidate. "	
Apr.19-71	Filed pltff's affidavit in support of consolidationm and requesting desigantion of lead counsel.	
Apr.28-71	Filed MEMO.END. on motion papers filed 3/23/71. Motion withdrawn. So ordered. Motley, J.	
Apr.26-71	Filed Memorandum of Pltf Dorothy L.Cole in opposition to consolidation.(Filed in 71 Civ. 102	
Jun 11-71	Filed Reply Memorandum of Pltf. Cole. Filed in 71 Civ. 1028	
Jun 11-71	Filed Supplemental and Reply Affidavit of Charles Trynin. "	
Jun 11-71	Filed Rejoinder Affidavit of Abraham L. Pomerantz. "	
Jun 14-71	Filed OPINION #37719. Defendants' motion for consolidation is granted " SUBMIT ORDER ON FIVE DAYS' NOTICE. So ordered. Motley, J.(mailed notice).	
Jun.18-71	Filed pltff. Samuel Greenfield Fund, Inc. Affdvt. and notice of motion for reargument fo the motion to consolidation. Ret. 6-29-71. (Filed in 71 Civ 1028)	
Jun.18-71	Filed Appendix to Affdvt. in support of motion for reargument	
Jun 24-71	Filed Notice of Motion re: Reargument. Ret. 6/29/71. (Filed in 71 Civ. 1028).	
Jun.28-71	Filed Herman Odell, Affdvt. for pltff. in opposition to reargument (Filed in 71 Civ 1028=	
Jun.28-71	Filed Herman Odell, Affdvt. for pltff. in opposition to Cross-Motion for Reargument. (Filed in 71 Civ 1028)	
Jul 13-71	Filed Request to Produce.	
Jul 13-71	Filed Answer to Notice to Produce.	
Aug.10-71	Filed MEMO.END. on motion papers filed 6/24/71. Motion for reargument denied. So ordered. Motley, J.	
Aug.10-71	Filed MEMO.END. on motion papers filed 6/18/71. Motion for reargument denied. So ordered. Motley, J.	
Aug.10-71	Filed Order of consolidation. Ordered that ALL PRETRIAL PROCEEDINGS inmach of the actions, are consolidated; ordered that Herman Odell of 1 New York Plaza, NY 10004 is designated as lead counsel, to supervise and coordinate all pretrial proceedings on behalf of all plaintiffs, etc.etc. Motley, J. (mailed notice).	
Sep.8-71	Filed pltffs' notice of motion Re; Class Action Ret. 9-21-71	
Sep.8-71	Filed pltffs' Memorandum in support of motion	
Sept.9-71	Filed Notice of Depositions of Baer, Stearns & Co. by Alan C.Greenberg; Allen & Co.Inc. by Stanley S. Shuman, etc.	
Sep.10-71	Filed stip and order that all pre-trial proceedings in Action No. 5 are consolidated with pre-trial proceedings in Action Nos. 1 through 4 and the parties to Action No. 5 will be bound, as of the date of the filing of this stip. 2, any defts who have been served in any of the actions will serve answers to the complaints 30 days after the date of filing of this stip. etc. 3. All disco very proceedings commenced in Action Nos. 1 through 5 will be deemed withdrawn. McGohey J.	
Sep. 14-71	Filed pltffs' Amended notice to take deposition of the following witnesses as indicated.	
Sep.20-71	Filed stipulation adjourning motion now ret.9/21/71 to 9/28/71. (Filed in 71 Civ.1042).	
Sep.24-71	Filed Defendants' Memorandum in opposition to motion to declare as class actions) (Filed in 71 Civ. 1028).	

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71 Civ 1284 SAMUEL GREENFIELD FUND, INC. VS SCHENLEY INDUSTRIES, INC. ET AL

Caster!

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order or Judgment Noted
Oct.1-71	Filed defts' Affdvt.and notice of motion to Quash Subpoenas. Ret. 10-7-71	
Oct.1-71	Filed defts' Memorandum in support of motin	
Oct.6-71	Filed Affidavit in opposition to application for protective order.(Filed in 71 Civ. 1028).	
Oct.6-71	Filed Pltfs'.Memorandum in opposition to defts'.application for protective order. "	
Oct.15-71	Filed Amended Complaint.	
Nov.5-71	Filed Memo Endorsed on motion filed 9-8-71-- Order and counter order submitted and order signed this day. Ryan,J.	
~~Dec. 13-71~~	~~Filed deft's supplemental interrogs.~~	
[illegible]11-72	Filed Transcript of Record of Proceedings. dated, Sept 8th, 1972.	
[illegible] 25-73	Filed Memorandum in opposition to a proposed consolidation order of pltf. Cole and in support of a proposed order of Pltf. Samuel Greenfield Fund, Inc.& related c	
[illegible] 25-73	Filed Additional Affidavit on Reargument.	"
[illegible] 25-73	Filed Deposition of Ben Grais.	
[illegible] 25-73	Filed Defendants' Memorandum in support of Proposed Order.	
[illegible] 25-73	Filed Plaintiffs' Reply Memorandum.	
[illegible] 25-73	Filed Defendants' Rebuttal Memorandum in opposition to motion to declare one or more of these actions class actions.	"
[illegible] 25-73	Filed (incount 1/11/72) Reply Memorandum of Pltfs.Vogel and Turner.	
[illegible] 25-73	Filed Reply Memorandum to Defendants' Supplemental Memorandum.	
[illegible] 25-73	Filed Defendants' Supplemental Memorandum in opposition to Pltfs'.Class Action motion.	"
[illegible] 25-73	Filed Pltfs'.Reply Memorandum in support of Definition of Classes.	
[illegible] 25-73	Filed OPINION #39199. (in this and four related actions 71 Civ. 1042, 71 Civ. 1284, 71 Civ. 1536 and 71 Civ. 2605. *** The Court is also satisfied that common questions prevail over individual questions and that a class action is superior to other methods for adjudication of the controversy; Ro; Costs of Notice. Pltfs. request that the Court hold an evidentiary hearing directed to the allocation of the costs of notice to class members under Rule 23 (c)(2), urging that such a hearing would demonstrate the apparent merit of pltfs' claims and that such a demonstration would justify imposition of the costs of notice entirely or substantially on defendants -- Eisen III requires rejection of plaintiffs' argument in this respect. -- Pltfs. must bear the costs of notice for the present, subject to their ultimate taxation in accordance with such orders as may be entered upon final disposition of the action. MOTIONS FOR INTERVENTION Mr. Grais' motion is granted etc. The motion of Mr. and Mrs. Hughes to intervene is granted. SETTLE ORDER ON NOTICE. WEINFELD, J. (mailed notice).	
Feb.25-74	Mailed notice of reassignment.	
11-10-75	Filed transcript of record of proceedings, dated Oct 14-15-16-17-28-29 1975 (FILED IN 71-1028)	
11-10-75	Filed transcript of record of proceedings, dated Oct. 30, 1975 (FILED IN 71-1028)	
11-24-76	Filed opinion # 45395 ... Given the foregoing, Count 1 is dismissed for failure of proof, Count 2 was withdrawn upon the trila, Counts 4&5 were not pursued upon the trial and are dismissed, and Count 3 is dismissed upon the law and the facts. The foregoing constitutes the Court's findings of fact and conclusions of law. Submit judgment on reasonable notice Owen J. m/n	
2-2-77	Filed final judgment class action.... it is order that deft have judgment dismising consolidated complaint with costs on the merits. Owern J. Judgment ent. Clerk 2-3-77 m/n	
3-2-77	Filed notice of appeal to the USCA. from the order of J OWEN dated 2-2-77. m/n	

A 015

CIVIL DOCKET

UNITED STATES DISTRICT COURT

JUDGE OWEN

~~JUDGE TENN~~

8/10/71 Consolidated for PRETRIAL PROCEEDINGS ONLY with 71-1028, 71-1042, 71-1536.

Jury demand date: by PLTFF. 4-6-71

71 CIV. 1536

TITLE OF CASE	ATTORNEYS
----------x HAROLD STILLER and MILDRED STILLER, as Joint Tenants, Plaintiffs, -against- R. C. SMITH, M. B. HOPKINS, B. COLDBERG, I. A. PEGLER, E. DENMARK, W. O. HEINZE, P. A. JOHNSTON, D. A. CHERNOW, P. J. CLINTONE, W. P. JOHNSON, G. H. PERKINS, H. L. NICOLS, SCHENLEY INDUSTRIES, INC. GINN ADDEE CORPORATION, RAPID AMERICAN CORPORATION Defendants.	For plaintiff: KASS, GOODKIND, WECHSLER & GERSTEIN 122 East 42nd St. N.Y.C.N.Y. 10017 For defendant:

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk		4-2-71	KASS, G	15	
			4-9-71	US TREAS		15
J.S. 6 mailed 2-2-77	Marshal					
Basis of Action:	Docket fee					
VIO .S.E.C. ACT. 1934	Witness fees					
Action arose at:	Depositions					

HAROLD STILLEM ET ANO VS. R.G. SMITH, ET AL

A 016

71 CIV. 1536

DATE	PROCEEDINGS	Date Order or Judgment Noted
Apr6-71	Filed Complaint. Issued Summons.	
Apr.6-71	Filed affidavit and order appointing Betty Licht to serve the summons and complaint. Clerk.	
Apr.8-71	Filed affidavit and order appointing Audrey Timberman to serve the summons and complaint. Clerk.	
Apr.12-71	Filed Notice of Motion re: Consolidate. Ret. 4/20/71 (with 71 Civ.1028, 71 Civ. 1042 and 71 Civ. 1284)by defts. Glen Alden, Schenley Industries and Rapid-American Corp.	
Apr.12-71	Filed Defendants' Memorandum in support of motion to consolidate.	
Apr.19-71	Filed pltff's affidavit in support of consolidation and requesting designation of lead counsel.	
Apr.26-71	Filed Memorandum of Pltf.Dorothy L.Cole in opposition to consolidation (Filed in71 Civ. 1028).	
Jun 11-71	Filed Reply Memorandum of Pltf. Cole. "	
Jun 11-71	Filed Supplemental and Reply Affidavit of Charles Trynin. "	
Jun 11-71	Filed Rejoinder Affidavit of Abraham L. Pomerantz. "	
Jun 14-71	Filed OPINION #37719. Defendants' motion for consolidation is granted. SUBMIT ORDER ON FIVE DAYS' NOTICE. So ordered.Motley, J.(mailed notice).	
Jun.18-71	Filed pltff. Samuel Greenfield Fund, Affdvt. and notice of motion for reargument of the motion to consolidation. Ret. 6-29-71. (Filed in 71 Civ 1028)	
Jun.18-71	Filed Appendix to affdvt. in support of motion for reargument	
Jun 24-71	Filed Notice of Motion re; Reargument. Ret. 6/29/71. (Filed in 71 Civ. 1028).	
Jun.28-71	Filed Herman Odell, Affdvt in opposition to reargument for pltff. (Filed in 71 Civ 1028)	
Jun.28-71	Filed Herman Odell, Affevt. for pltff. in opposition to Cross-Motion for Reargument. (Filed in 71 Civ 1028)	
Aug.10-71	Filed MEMO.END. on motion papers filed 6/24/71. Motion for reargument denied. So ordered. Motley, J	
Aug.10-71	Filed MEMO.END. on motion papers filed 6/18/71. Motion for reargument denied. So ordered. Motley,J.	
Aug.10-71	Filed Order of consolidation. ORDERED that ALL PRETRIAL PROCEEDINGS in each of the actions, are consolidated; ordered that Herman Odell of 1 New York Plaza, NY 10004, is designated as lead counsel, to supervise and coordinate all pretrial proceedings on behalf of all plaintiffs, etc.etc.Motley,J.(mailed notice). (Filed in 71 Civ. 1028) (Also in 71-1042 and 71-1284.)	
Sep.8-71	Filed pltffs' notice of motion Re; Class Action Ret. 9-21-71	
Sep.8-71	Filed pltffs' Memorandum in support of motion	
Sept.9-71	Filed Notice of taking Depositions of Baer,Stearns & Co. by Alan C. Greenberg; Allen & Co. Inc. by Stanley S. Shuman, etc.	
Sep. 10-71	Filed stip and order that all pre-trial proceedings in Action No. 5 are consolidated with pre-trial proceedings in Action Nos. 1 through 4 and the parties to Action No. 5 will be bound, as of the date of the filing of this stip. 2, any defts who have been served in any of the actions will serve answers to the complaints 30 days after the date of filing of this stip., etc. 3. All discovery proceedings commenced in Action Nos. 1 through 5 will be deemed withdrawn. McGohey J.	
Sep. 14-71	Filed Amended notice to take deposition of the following witnesses as indicated.	
Sep.20-71	Filed stipulation adjourning motion now ret.9/21/71 to 9/28/71. (Filed in 71 Civ. 1042).	
Sep.24-71	Filed Defendants' Memorandum in opposition to motion to declare as class actions. (Filed in 71 Civ. 1028).	
Oct.1-71	Filed defts' Affdvt. and notice of motion to Quash Subpoenas. Ret. 10-7-71	
Oct.1-71	Filed defts' Memorandum in support of motion	
Oct.6-71	Filed Affidavit in opposition to application for protective order.(Filed in 71 Civ. 1028).	
Oct.6-71	" Pltfs'. Memorandum in opposition to defts'. application for protective order. "	

Cont'd. Next Page #3

71 Civ 1536 HAROLD STILLEN ETANO VS R.G. SMITH, ET AL 71 Civ 1536

PAGE # 3 JUDGE OWEN JUDGE TENNEY

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order or Judgment Note
Nov.5-71	Filed Memo Endorsed on motion filed 9-8-71-- Order and counter-order submitted, and order signed this day. Ryan,J.	
11-72	Filed Transcript of Record of Proceedings, dated, Sept 8th, 1972.	
y 25-73	Filed Memorandum in opposition to a proposed consolidation order of pltf. Cole and in support of a proposed order of Pltf. Samuel Greenfield Fund, Inc.& related cas	"
y 25-73	Filed Additional Affidavit on Reargument.	
y 25-73	Filed Deposition of Ian Grais.	
y 25-73	Filed Defendants' Memorandum in support of Proposed Order.	
y 25-73	Filed Plaintiffs' Reply Memorandum.	
y 25-73	Filed Defendants' Rebuttal Memorandum in opposition to motion to declare one or more of these actions class actions.	"
y 25-73	Filed (incourt 1/11/72) Reply Memorandum of Pltfs.Voege and Tunmore.	
y 25-73	Filed Reply Memorandum to Defendants' Supplemental Memorandum.	
y 25-73	Filed Defendants' Supplemental Memorandum in opposition to Pltfs' Class motion motion.	"
y 25-73	Filed Pltfs' Reply Memorandum in support of Definition of Classes.	
y 25-73	Filed OPINION #39499. (in this and four related actions 71 Civ. 1042, 71 Civ. 1284, 71 Civ. 1536 and 71 Civ. 2605. The Court is also satisfied that common questions prevail over individual questions and that a class action is superior to other methods for adjudication of the controversy; Re: Costs of Notice. Pltfs. request that the Court hold an evidentiary hearing directed to the allocation of the costs of notice to class members under Rule 23 (c)(2), urging that such a hearing would demonstrate the apparent merit of pltfs' claims and that such a demonstration would justify imposition of the costs of notice entirely or substantially on defendants -- Eisen III requires rejection of plaintiffs' argument in this respect. Pltfs. must bear the costs of notice for the present, subject to their ultimate taxation in accordance with such orders as may be entered upon final disposition of the action. MOTIONS FOR INTERVENTION Mr. Grais' motion is granted. etc. The motion of Mr. and Mrs. Hughes to intervene is granted. SETTLE ORDER ON NOTICE. WEINFELD, J. (mailed notice).	
Feb.25-74	Mailed notice of reassignment.	
11-10-75	Filed transcript of record of proceedings, dated oct 14-15-16 17, 28, 29, 1975 (FILED IN 71-1028)	
11-10-75	Filed transcript of record of proceedings, dated oct 30, 1975 (FILED IN 71-1028)	
11-24-76	Filed opinion # 45395 .... Given the foregoing, Count 1 is dismissed for failure of proof, Count 2 was withdrawn upon the trial, Counts 4 & 5 were not pursued upon the trial and are dismissed , and Count 3 is dismissed upon the law and facts. The foregoing constitutes the Court's findings of fact and conclusions of law . Submit judgment on reasonable notice Owen J. m/n	
2-2-77	Filed final judgment class action.... it is ordered that deft have judgment dismissing consolidated complaint on merits with costs...Owen J. Judgment etn. Clerk 2-3-77 m/n	
3-2-77	Filed notice of appeal to the USCA form the order of J. Owen dated 2-2-77.	
4/15/77	Filed affidavits of service of Betty Licht on Schenley Inds., Glen Alden and Rapid American Corp.	

CONSOLIDATED AMENDED COMPLAINT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

DOROTHY L. COLE, LOIS H. ZISOOK, HARRY W. VOEGE AND ANNA MAY TUNMORE, as Trustees, SAMUEL GREENFIELD FUND, INC., and HAROLD STILLER AND MILDRED STILLER, as joint tenants,

Plaintiffs,

-against-

SCHENLEY INDUSTRIES, INC., GLEN ALDEN CORPORATION, RAPID-AMERICAN CORPORATION, ISIDORE A. BECKER, BERNARD GOLDBERG, PAUL A. JOHNSTON, DAVID A. CHERNOW, WALTER O. HEINZE, HOWARD FELDMAN, MILO B. HOPKINS, RUSSELL G. SMITH, ALBERT N. GREENFIELD, MESHULAM RIKLIS, GLEN ALDEN SUBSIDIARY, INC., P. J. CLIFFORD, W. P. JOHNSON, S. KITTAY, M. L. MENDELL, L. C. LANE, G. H. PERKINS and B. DENMARK,

Defendants.

----------X

71 Civ. 1028

CLASS ACTION

CONSOLIDATED AMENDED COMPLAINT

Plaintiffs Request Trial By Jury

JURISDICTION AND CLASS ACTION ALLEGATIONS

1. (a) Jurisdiction of Counts I, III, IV and V of this complaint is founded on Section 27 of the Securities Exchange Act of 1934 (1934 Act) (15 U.S.C. §78aa) and arises under Sections 10(b) and 14(a) of the 1934 Act (15 U.S.C. §§78j and 78n(a)), and the Rules and Regulations of the Securities and Exchange Commission ("SEC") promulgated thereunder.

(b) Jurisdiction of Counts II and V of this complaint is founded in diversity of citizenship and amount. The amount in controversy exceeds, exclusive of interest and costs, the sum of TEN THOUSAND ($10,000) DOLLARS.

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THE PARTIES

2. Plaintiff(s):

(a) DOROTHY L. COLE ("Cole") is a citizen of the State of Florida. At all times since April 7, 1970 she has been and is now the owner, through purchase, of 500 shares of $1.40 Cumulative Convertible Preferred Stock of defendant Schenley Industries, Inc. ("Schenley Preferred"), described below.

(b) LOIS H. ZISOOK is a citizen of the State of Illinois. At all times since February 1970 she has been and is now the owner, through purchase, of 500 shares of Schenley Preferred.

(c) HARRY WALTER VOEGE ("Voege"), a citizen of the State of New York, and ANNA MAY TUNMORE ("Tunmore"), a citizen of the Commonwealth of Pennsylvania, have been and are still the owners and holders of the common stock of Schenley Industries, Inc. ("Schenley Common"), described below, as Trustees under the Last Will and Testament of Harry W. Voege, deceased, by appointment of the Surrogate's Court, Nassau County, wherein decedent resided at his death.

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3. Defendant(s):

(a) SCHENLEY INDUSTRIES, INC. ("Schenley"), is a corporation organized under the laws of the State of Delaware and has its principal place of business in the State of New York. The shares of Schenley Common and Schenley Preferred have been and are listed on the New York Stock Exchange.

(b) GLEN ALDEN CORPORATION ("Glen Alden"), is a corporation organized under the laws of the State of Delaware and has its principal place of business in the State of New York. Glen Alden owns 86% of the outstanding Schenley Common.

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4. Upon information and belief, each defendant named below is a citizen of a state other than the State of Illinois or Florida:

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COUNT I

5. This Count is brought by plaintiffs Cole, Zisook, Harold Stiller and Mildred Stiller against defendants Schenley, Glen Alden, Rapid, Becker, Goldberg, Johnston, Chernow, Heinze, Feldman, Hopkins, Smith, Greenfield, Riklis and Denmark.

6. Defendant Schenley, at all times relevant herein, has been engaged in the business of producing and distributing distilled liquors and wines. At May 10, 1971 Schenley had outstanding 7,979,747 shares of common stock (Schenley Common) and 2,520,005 shares of $1.40 Cumulative Convertible Preferred Stock (Schenley Preferred), which were originally issued on or about December 15, 1969. Each share of Schenley Preferred is redeemable at $24 per share and is convertible into 9/10 of a share of Schenley Common, at the option of the holder, at any time through the third day prior to the date fixed for redemption. Schenley also has outstanding, as of December 31, 1970, 197,594 shares of Cumulative Preference Stock, redeemable at $10 per share, at any time, with an annual dividend rate of $.50, which is not convertible into Schenley Common.

7. On March 20, 1968 Glen Alden purchased 1,417,689 shares of Schenley Common from Lewis S. Rosensteil, then Chairman of the Board of Directors of Schenley, and six other sellers, at an aggregate purchase price of $75,610,080, which amounted to approximately $53.33 per share. On April 26, 1968 Glen Alden purchased an additional 110,000 shares of Schenley common stock on the New York Stock Exchange at an aggregate purchase price of $5,851,208, which averaged $53.20 per share. In August 1968 Glen Alden, pursuant to

a tender offer, acquired an addition 5,359,400 shares of Schenley common stock through an exchange of cash and debt securities of Glen Alden.

8. Since on or about December 31, 1968, Glen Alden has been and is now the beneficial owner of 6,887,089 shares of Schenley common stock constituting approximately 86% of the outstanding Schenley common and 84% of the voting power of the outstanding capital stock of Schenley. Glen Alden owns no Schenley Preferred.

9. From as early as on or about January 1, 1969 to date, Glen Alden, by virtue of its stock ownership, has controlled and dominated the affairs of Schenley and the decisions of the officers and directors of Schenley and have nominated and elected its officers and directors. Rapid, through its stock ownership of Glen Alden, has dominated and controlled the business and affairs of both Glen Alden and Schenley. Glen Alden and Rapid, as the controlling stockholders of Schenley, and the other named defendants, acting in concert with Glen Alden and Rapid, have been and are now under a fiduciary obligation to deal fairly with those persons, other than defendants, who are the holders of Schenley Preferred and Schenley Common ("Minority Stockholders of Schenley")

10. On or about February 24, 1971, defendants Glen Alden and Schenley announced the terms of a proposed merger of those companies upon terms substantially similar to those described in paragraph 11 below.

11. The named individual defendants, acting together, on or about May 21, 1971, caused Schenley to enter into a Plan of Reorganization and an Agreement of Merger, under which Schenley was to be merged with Glen Alden Subsidiary, Inc., a wholly-owned subsidiary of Glen Alden. Thereafter, as the surviving corporation, Schenley was to become the wholly-owned subsidiary of Glen Alden, by Glen Alden purchasing each of the outstanding shares of Schenley Common for $5 per share and $30 principal amount of a 7-1/2% Glen Alden Sinking Fund Subordinated Debentures due 1985 ("7-1/2% Debentures) and each of the outstanding shares of Schenley Preferred for $4.50 in cash and $27 principal amount of 7-1/2% Glen Alden Debentures. The consummation of the merger required the approval of a majority of the combined outstanding voting power of Schenley with each share of Schenley Common entitled to one vote and each share of Schenley Preferred entitled to 1/10 of a vote.

12. The defendants, other than Schenley, caused defendant Schenley, by use of the mails and the means and instrumentalities of interstate commerce, to distribute a Proxy Statement, dated May 21, 1971 ("Proxy Statement"). Proxies were solicited thereunder on behalf of the management from the holders of Schenley Preferred and Schenley Common to vote, at a June 17, 1971 meeting of stockholders of Schenley, on the adoption of the proposed merger.

13. At said stockholder's meeting, a total of 7,233,866 votes were cast in favor of the merger, including 6,887,069 votes cast by Glen Alden, and 198,150 votes were cast against the merger. The holders of approximately 200,000 shares of Common and 1,000,000 shares of Preferred Schenley stock filed written objections to the merger. The merger was declared by defendants to be effective on June 17, 1971.

14. Upon information and belief, the holders of 910,000 shares of Schenley Preferred and Common shares have demanded appraisal of the value of their shares.

15. As hereinafter set forth in paragraphs 16 through 28, the Proxy Statement contained statements which, at the time and in the light of the circumstances under which the same were made, were false or misleading with respect to a material fact, or which omitted to state a material fact, necessary in order to make the statements made therein not false or misleading. As such, the Proxy Statement violated and continues to violate the provisions of §14(a) of the 1934 Act and Regulation 14A and, more particularly, Regulation 14a-9 thereof, as promulgated by the SEC.

16. In the period from on or about January 1968 to date, defendants knew and concealed from the Minority Stockholders of Schenley, and the public, the following material facts, which were not disclosed as required in the Proxy Statement, the Registration Statement and Prospectus of Glen Alden which became effective on or about August 8, 1968, the financial statements and the Forms 8-K and 10-K of Schenley and Glen Alden that were filed with the SEC by them with respect to said period.

(a) At all such times, Schenley's working capital of approximately $324,000,000, i.e., its current assets (cash, receivables, inventory of wines and spirits, and marketable securities), less its current liabilities, was at least $200,000,000 more than Schenley required in order

to operate its business.

(b) At all such times it was the intention of defendants to cause Schenley to liquidate and convert into cash at least $200,000,000 of its current assets in the following manner:

(i) The liquidation, through sales in bulk, of at least $120,000,000 of its surplus inventories of spirits and wines. At August 30, 1968, Schenley's entire inventory had a book value of $342,800,000. Such surplus was no longer needed by Schenley, by reason of the discontinuance, or the declining demand for, or unsatisfactory profit margins in, certain brand labels or types of spirits and wines. The annual carrying costs, i.e., insurance, storage, etc., substantial in amount, of such inventories, and the existence of a ready market for the sale in bulk, at prices equal to, or substantially above, their book value, provided the basis for Schenley adopting, in late 1968, the policy of making bulk sales of its surplus inventory.

(ii) By December 31, 1970, through such sales, Schenley had liquidated at least $40,000,000 of its surplus inventory. At all times between January 1, 1971 and the date

hereof, the policy and practices of liquidation of surplus inventories continued in effect.

(iii) The collections, at face value, of accounts receivable, in the amount of at least $20,000,000, which were created, in the first instance, by sales of bottled goods, upon credit terms, to wholesalers and distributors, including those controlled by or obligated to Schenley, in amounts that exceeded the seasonal requirements of the buyers.

(iv) The liquidation of Schenley's marketable securities which, as of August 31, 1968, had a market value of over $35,000,000. The cash proceeds, together with the surplus cash on hand and to be derived, in part, from the planned sale of certain assets connected with Schenley's wine business, would total not less than $60,000,000.

(c) It was practicable, and in the best interests of Schenley and its stockholders, for Schenley to liquidate its excess current assets as stated above, as well as to distribute the proceeds, amounting to at least $20 per share (assuming conversion of the Schenley $1.40 Preferred into Schenley Common), to all stockholders of Schenley for the following reasons:

(i) The foregoing liquidation of assets and the distribution by Schenley of at least $200,000,000 or more in cash would have no adverse effect on the future earning power, or going concern value, of the remaining assets of Schenley because the assets to be liquidated and distributed were not needed to finance the continued operations of Schenley.

(ii) The restrictions, under the anti-trust laws, then applicable to the acquisition by Schenley of additional liquor businesses prevented Schenley from investing the whole or any part of said $200,000,000 in such businesses.

(iii) It would have been impractical for the management of Schenley, having no significant previous business experience in other industries, to invest the whole or any part of said $200,000,000 in a non-liquor industry.

(d) But for the alleged merger between Schenley and Glen Alden the $20 per share of Schenley Common to be realized from the liquidation of Schenley's excess current assets, and the $9.30 per share of Schenley Common to be realized from the net proceeds of the sale on May 10, 1971 of its entire interest in The Buckingham Corporation ("Buckingham"), to Northwest

Industries, Inc. for $120,000,000 described in the next following paragraph, would have been available for distribution, from time to time, to all stockholders of Schenley in partial liquidation of its excess working capital, without adversely affecting the current or future earnings of Schenley.

17. Based on actual results of operations in 1970, Schenley's annual earnings would amount to approximately $22,500,000, or $2.18 per share, excluding the earnings of Buckingham and assuming the proceeds of the May 10, 1971 Buckingham sale were applied to the reduction of Schenley's long term indebtedness. Said earnings are hereinafter referred to as "Pro Forma Earnings" and were set forth in the Proxy Statement.

18. With respect to the Pro Forma Earnings, defendants knew before May 21, 1971 and failed to disclose in the Proxy Statement, as required, that:

(a) The distribution of approximately $200,000,000 of Schenley's excess working capital to its stockholders would have little or no adverse effect upon those earnings.

(b) The minimum fair value of the Schenley common shares was equivalent to thirteen times those earnings, or $28.34 per share.

(c) The fair value of the Schenley Common and Preferred shares at the time of the merger was equivalent to at least 16 times the Pro Forma Earnings, a more appropriate multiple of earnings in view of the fact that the earnings of Schenley in 1971 and thereafter would increase substantially because of:

(i) the overhead expense reduction program that had been put into effect in 1968 by the new management of Schenley;

(ii) the future benefits to be realized from the non-recurring transitional costs incurred in 1968 and 1969 in accomplishing marketing, production and other organizational changes;

(iii) the continuation of the policy, commenced in 1968 by Schenley, of selecting an increasingly larger portion (as compared to the years preceding 1968) of its more costly surplus inventory of domestic and Canadian whiskies 6 years or older in age, and a correspondingly smaller portion of less costly younger whiskies, for current sales of bulk and bottled spirits. Such policy had the effect of increasing the cost of goods sold and thereby decreasing the amount of profit and its percentage ratio to sales in the years 1968 to date. As those inventories of more costly older whiskies were being depleted and a greater portion of lower cost younger whiskies were utilized in their place for current sales of bulk and bottled whiskey, profits would increase in amount and in percentage ratio to sales.

(iv) the increase in cash flow resulting from the continuation of the policy commenced in 1968 of reducing current domestic and Canadian production of new spirits;

(v) the past and current industry-wide trend of yearly increases in the consumption of whiskey from which Schenley would benefit; and

(vi) the stocks of most of the other comparable

liquor companies were selling in the marketplace at the time of the merger at a multiple of 16 or more times current earnings.

19. Upon information and belief, the Proxy Statement failed to disclose, as required, that prior to May, 1971, defendants, including Riklis, Glen Alden and Rapid, had negotiated and received offers to buy the goodwill related to certain brand labels of Schenley at prices ranging from fourteen to twenty times net earnings, after taxes, plus the Schenley book value of inventory, plant and equipment, at the time of sale. Sales at such prices would have produced values for those assets which were substantially higher than their then book value as reflected in the financial statements of Schenley that were included in the Proxy Statement.

20. During the period prior to and between July 1969 to February 24, 1971, the defendants also depressed the market prices of Schenley shares by concealing from the Schenley shareholders, as well as the investing public, the additional fact that the fair value of Schenley's investment in The Buckingham Corporation was at least $75,000,000 more than their Schenley book value of $32,970,000, which reflected their original cost in 1964 when Schenley purchased 3,054,450 shares of Buckingham common stock at $10.50 per share.

21. The Proxy Statement gave the unavoidable and singular impression that in the opinion of Schenley and Glen Alden the fair value of the Schenley shares for the purpose of merger was equivalent to their highest market price in the period between July of 1969 and February 24, 1971 when the merger was announced. Such market price approximated

$29 for the Schenley Common and $26 for the Schenley Preferred shares. However, those market prices had been artificially depressed during that entire period as well as prior thereto by the concealment of the facts alleged in paragraphs 16 through 20 above and in paragraph 22 below. Disclosure of such facts would have revealed that the fair value of those shares during that period was not less than $48.34 per share for Schenley Common and $43.50 per share for Schenley Preferred and as much as $64 and $57, respectively.

22. (a) By a Proxy Statement dated November 17, 1969, Schenley had proposed to acquire the 2,742,450 shares of common stock of Buckingham held by persons other than Schenley through a merger of Buckingham with Schenley under which Schenley was to exchange one share of the newly authorized Schenley Preferred in exchange for each share of Buckingham common. That merger was consummated.

(b) Upon information and belief, prior to November 17, 1969, defendants Riklis, Glen Alden and Rapid had negotiated and had received good faith offers from third persons to purchase the 3,054,450 shares of Buckingham common that were then owned by Schenley at a price of $36 per share or more. The November 17, 1969 Proxy Statement failed to disclose, as required, that a ready market existed for the sale of the shares at a price substantially higher than their book value as reflected on the books of Schenley and Buckingham. Such failure to disclose also rendered untrue and misleading those portions of the 1969 Proxy Statement that stated

(i) the Buckingham shares per the latter's books had a book value of $7.31 per share (page 11); (ii) the market price of BHM common stock to be in the range of $19 to $23.75 per share in the four and one-half months that preceded the November 17, 1969 Proxy Statement (page 16), and (iii) that no firm offers for the Buckingham common were received and no negotiations were commenced in the year prior to November 17, 1969 (page 16).

23. The market prices of Schenley's shares in 1970 and 1971 did not reflect the substantial increase in their intrinsic value attributable to the then value of its investment in Buckingham or to the consummation on May 10, 1971 of the sale by Schenley, of its interest in Buckingham to Northwest Industries Inc. ("Northwest").

(a) On November 2, 1970, it was publicly announced that Schenley and Northwest had reached an agreement for the sale of Buckingham for $120,000,000 with the closing to take place as soon as possible, but no later than December 31, 1970. A series of later announcements reported the postponement of the closing to February 28, 1971, March 30, 1971, April 3, 1971, April 30, 1971 and May 10, 1971. Those later announcements gave the impression that the consummation of the sale had been made uncertain by:

(i) The difficulties of Northwest in obtaining the financing necessary to close the proposed purchase; and

(ii) The delays being encountered in obtaining

the necessary approval of the proposed sale from the United States Government, who, in April 1966, had commenced an antitrust action to divest Schenley of its controlling interest in Buckingham.

(b) On March 29, 1971, a consent decree was entered that permitted the consummation of the sale to Northwest. In fact, it was not until sometime in April or early in May 1971 that the definitive agreement was reached for the sale of Buckingham to Northwest.

24. The 1971 Proxy Statement failed to disclose in the required form and manner the following material facts:

(a) The 6,887,089 Schenley common shares acquired by Glen Alden in 1958 were reflected in Glen Alden's financial statements at an average value per share of about $57, representing their cost to Glen Alden, exclusive of the discount of $91,000,000 from the face amount attributable to the Glen Alden 6% Debentures, which were given in payment for those shares.

(b) As of May 21, 1971, Glen Alden and its management were of the opinion that the $57 per share value of the Schenley Common, when acquired by Glen Alden in 1968, had not declined in value since the 1968 acquisition. The opinion, to such specific effect, is expressed in small

print and obscure language which is buried, some 75 pages after page 4 of the Proxy Statement, in a footnote "D" to the financial statements of Glen Alden for the years ended December 31, 1969 and 1970, at page F-13, as follows:

> "D. Intangibles and Franchises
> Intangibles represent the excess of unallocated cost of investments over equity in net assets of Schenley ($85,583,212) and other subsidiaries (1969-$34,198,673; 1970-$43,044,738). These net excess acquisition costs have been recognized by the management of Glen Alden as being similar in nature to intangibles which have not declined in value since acquisition. Accordingly, at the respective dates of acquisition, the management of Glen Alden adopted the policy of not amortizing these excess purchase costs so long as there is no diminution in value of the related investments." (emphasis supplied)

25. While the 1971 Proxy Statement, at page 5 stated,

> "It is expected that the fair market value of the Debentures [the 7-1/2% Glen Alden Debentures into which the shares of Schenley preferred and common are to be converted under the merger] on the effective date of the proposed reorganization [the merger] will be less than their face amount",

the Proxy Statement failed to disclose, as required, the following material facts, which would permit the reader of the Proxy Statement to appraise the value of the proposed 7-1/2% Debentures based on the value of the 6% Debentures of Glen Alden that are traded on the New York Stock Exchange and, except for minor differences in sinking fund, interest

rate and maturity date, the two issues are the same:

(a) The 6% Glen Alden Debentures which were given in 1968 in exchange, by Glen Alden, for the Schenley common, between January 1, 1971 and May 21, 1971, had a market value which ranged from 62-1/4 to 53-1/4 per $100 in face amount, as shown by the quoted prices of the 6% Debentures on the New York Stock Exchange. On May 20, 1971, the closing price was 57-1/2.

(b) The 6% Debentures were rated "B" in investment quality by Moody's Financial Service and in Moody's Industrial Manual. The purpose of such rating is to provide the American investor with a simple system of gradation by which the relative investment qualities of funds may be noted. Bonds graded "B" are those

> "Bonds which . . . lack characteristics of the desirable investment. Assurance of interest and principal payments or of maintenance of other terms of the contract over any long period of time may be small." (Moody's Industrial Manual, 1970, pp. v, vi)

26. The Proxy Statement is both false and deceptively misleading in stating the authority for and the validity of the merger as being predicated on the merger laws of the State of Delaware; whereas, in fact and in law, the terms,

purposes and effects of the 1971 merger took that merger outside the scope, purpose and application of those laws, as set forth in Count II hereof, all the allegations of which are herein incorporated by reference. Consequently, the merger is invalid and is of no force and effect under the laws and precedents of the State of Delaware.

27. In legal effect, the alleged merger was nothing more than a tender offer which would be binding upon only those holders of Schenley shares who, without knowledge of the matters herein complained of, voluntarily accepted the same. Such being the case, the Proxy Statement erroneously describes the nature and binding effect of the purported merger and the choices available to the holders of Schenley shares, including those desiring to exercise their right of appraisal under Section 262 of the Delaware Law, as described at pages 6 and 7 of the Proxy Statement. With respect to said right of appraisal, the Proxy Statement failed to disclose, as required, that a stockholder who demanded appraisal would be treated by Schenley and Glen Alden as having made an election of remedy that precluded such stockholder from becoming a member of the class on whose behalf the within actions, as described at pages 8 through 11 of the Proxy Statement, were brought.

28. The terms of the 1971 merger were grossly unfair to the Minority Stockholders of Schenley. In June and July 1971, the 7-1/2% Glen Alden debentures were quoted on the New York Stock Exchange on a "when issued" basis at a 32%

discount from face amount. Based on such discount, the holders of Schenley Preferred and Common will receive cash and debentures, having a fair value of $22.86 and $25.40 per share, respectively, whereas the fair value of those shares was a minimum of $43.50 and $48.34 per share, respectively. Thus, that merger has deprived the holders of 2,520,005 shares of Schenley Preferred and 1,092,658 shares of Schenley Common of at least $20.64 and $22.94, respectively, per share, with a resulting undeserved profit and gain to Glen Alden of not less than $77,000,000.

29. In addition, those persons similarly situated, who were stockholders of Schenley on February 24, 1971 and who, without knowledge of the true facts and who believed the proposed merger to be unfair, inadequate or otherwise unacceptable, and thereby were forced to sell and sold their shares in the market after the public announcement of the merger on February 25, 1971 and on or before June 17, 1971, when the Schenley Common and Preferred shares were delisted from trading on the New York Stock Exchange, were similarly damaged by an amount equal to the difference between the fair value of their shares on the day of sale and the proceeds derived from selling their shares at market prices that were artificially depressed by defendants in the respects herein set forth.

30. The unfairness of the merger is compounded, from the standpoint of the Minority Stockholders of Schenley, by comparing the investment value of their shares with that of the 7-1/2% Debentures. Thus:

(a) The $1.40 annual dividend on the Preferred is covered eight times by the current earnings, after taxes, of Schenley; whereas Glen Alden's fixed charges of interest and debt expense, including interest on the 7-1/2% Debentures, according to the Proxy Statement, willbe covered 1.46 times by earnings before income taxes after the merger.

(b) The preference on liquidation of the Preferred is $61,000,000 and the net assets of Schenley available to pay such preference are $417,000,000; whereas the tangible assets of Glen Alden are valued at $1,032,000,000 and its total liabilities at $1,036,000,000 after the merger.

(c) The Schenley Preferred is presently convertible into 9/10 of a share of Common, thus giving the holder the valuable option to share in the increasing prosperity of Schenley; whereas the 7-1/2% Debentures are not convertible into ar equity security of Glen Alden.

31. The terms of the merger were inadequate and unfair to the Minority Stockholders for the reasons stated above in paragraphs 16 through 30, and for the further reason that the terms of the merger were based on the market prices of the Schenley shares on the New York Stock Exchange between July 1969 through February [illegible], 1971. Those market prices did not

reflect the higher fair value of those shares for purposes of the merger in at least three respects, as follows:

(a) Those market prices were artificially depressed by defendants, as stated in paragraphs 20 through 23.

(b) Between 1969 and 1971 the market for Schenley common shares was a limited one in which there was no active trading. While there was more active trading in Schenley Preferred, those shares, because of their convertibility into 9/10ths of a share of Common, were traded at prices equal to 9/10th of the price of the Common. After September 1968 Glen Alden was the owner of 6,887,089 shares of Schenley Common and only 1,092,658 common shares were left outstanding in the hands of about 7,000 persons which were available for trading in the market. From September 1968 through February 1971 the total volume of trading in Schenley Common amounted to 1,007,800 shares or an average of about 1,600 shares per day, whereas the total volume of trading in 1967 was 11,793,150 shares or a daily average of 46,400; and in the first 8 months of 1968 the total volume was 8,110,800, with a daily average of 47,700 shares.

(c) Where, like here, only a small fraction of the outstanding shares are available for trading in the market, current fair value usually exceeded by a substantial amount the current market prices of shares.

32. The conduct complained of herein constituted an integral part of a three step plan, conceived in early 1968, which had, as its main objective, the appropriation by Glen Alden of all of the shares, assets, goodwill and business of Schenley and its subsidiary Buckingham, at prices substantially below their fair value at the expense of the minority stockholders of Schenley and of Buckingham and in violation of their rights and privileges as such stockholders. As below set forth, those steps and their objective could not have been accomplished without the use of deception and concealment by defendants.

(a) The first step of the plan was to have Glen Alden acquire all or substantially all of the Schenley Common. In August, 1968, Glen Alden acquired, through purchase, 5,359,400 shares of Schenley Common pursuant to the tender offer set forth in the Glen Alden Prospectus dated August 8, 1968, without disclosing therein, as required, the facts alleged in paragraphs 16 through 20 hereof. Thereafter, Glen Alden owned 6,887,089 shares, or 86%, of the outstanding Schenley Common.

(b) The second step was to have Schenley as the holder of 52.7% of the outstanding common stock of Buckingham, acquire the remaining shares held by the public at prices substantially less

than their fair value. That step was accomplished in December 1969 by the concealment of material facts which depressed the market prices of Buckingham shares in 1969 as set forth in paragraphs 20 and 22 above and, as alleged in paragraph 33, below, by the use of an untrue and deceptively misleading Proxy Statement of Schenley dated November 17, 1969 ("1969 Proxy Statement"), under which Schenley acquired all of the remaining shares of Buckingham at about 60% of their fair value by the issuance of the newly authorized Schenley Preferred stock.

(c) The third and final step was accomplished when the merger with Glen Alden was consummated on June 17, 1971. As a result, the Minority Stockholders of Schenley, owning 1,092,658 shares of Schenley Common and 2,502,005 shares of Schenley Preferred, were forced by the merger either to sell their shares to Glen Alden for the grossly inadequate consideration specified by the terms of the merger, or to sell their shares in the open market between February 25, 1971 and June 17, 1971 at artificially depressed market prices. Such result could not have been accomplished without the use of concealment, deception and the artificial depression of the market prices of Schenley shares, as set forth in paragraphs 16 through 31 and 33 hereof.

33. Upon information and belief, the 1969 Proxy Statement, which is incorporated herein by reference, contained, among others, the following material misstatements and failures in disclosure:

(a) That "... the management of Glen Alden has under consideration the possible future merger or consolidation of Schenley and Glen Alden. No decision as yet has been made as to whether or when any such merger...might be proposed or as to the forms or terms of such transaction." (p. 25)

The above statement was untrue and deceptively misleading in that, prior to, on, and after November 17, 1969, defendants knew of the nature and effect of recent amendments to the Delaware Corporation Law, hereinafter described, which would permit a merger of Schenley with a subsidiary of Glen Alden, with Schenley remaining as the surviving corporation and with Glen Alden acquiring all outstanding shares of Schenley, including the $1.40 Preferred, in exchange for cash and a debt security of Glen Alden. By November 17, 1969, it had already been decided that after the issuance of the $1.40 Preferred a merger, incorporating the

foregoing terms, would be proposed and consummated. However, defendants failed to disclose that material fact in their Proxy Statement, as required.

(b) Upon information and belief, prior to November 1969, defendants, including Riklis, Glen Alden and Rapid, had negotiations and had received good faith offers from third persons to purchase Schenley's interest in Buckingham, consisting of 3,054,450 shares, for $36 per share or more, based on the then current financial condition of Buckingham. The book value of those Schenley shares was reflected in the published financial statements of Schenley at historical cost of about $10 per share, or $32,970,000. The 1969 Proxy Statement failed to disclose, as required, that a ready market existed for the sale of those shares at a price of $36 or more per share. The failure to make such disclosure rendered untrue and misleading those portions of the Proxy Statement that stated the book value of those shares to be $7.31 per share (p. 11) as well as those portions that stated the market prices of those shares to be in the range of 21-3/8 to 23-3/4 (p. 12). The concealment of the offers to purchase at $36 per share, or

more, also depressed the prevailing market prices of the Schenley and Buckingham shares, as defendants knew.

(c) Defendants knew and failed to disclose in the 1969 Proxy Statement, as required, that recent amendments to §251 of the Delaware Corporation Law, effective July 15, 1969, had lowered the fraction of the stockholder vote required for approval of a merger from 2/3 to a majority of the outstanding shares of Schenley voting together as one class. Those amendments also permitted, for the first time, the issuance of cash and other property in exchange for shares of a party to such a merger. The failure to disclose the nature and effect of those recent amendments rendered untrue and deceptively misleading the following statement

> "Schenley may not, without the consent of the holders of two-thirds of the outstanding shares of Schenley $1.40 Preferred Stock, amend its Certificate of Incorporation to authorize any additional shares of Schenley $1.40 Preferred Stock or of any other class of stock ranking on a parity with or prior to the Schenley $1.40 Preferred Stock as to dividends or rights upon liquidation or to alter or change the powers, preferences, or special rights of the Schenley $1.40 Preferred Stock so as to affect adversely the Schenley $1.40 Preferred Stock." (p. 38)

which was made in the 1969 Proxy Statement.

(d) The above statement was designed to give the prospective holders of the Schenley $1.40 Preferred the false impression that the valuable and attractive right of the holders to convert their shares into 9/10 of a share of Schenley common (at any time prior to the third day fixed for redemption) could not be altered or eliminated without the affirmative vote of 2/3 of the holders of such shares voting as a class. Other statements, made at page 39 of the Proxy Statement, furthered the false impression that any future merger or consolidation of Schenley would not adversely affect those rights of the preferred stock. However, as the defendants knew and failed to disclose, those rights could be adversely affected by resort to the recent amendments to the Delaware Corporation Law. It was these amendments which enabled Glen Alden to deprive the holders of the preferred stock of their attractive and valuable conversion rights and forced those holders to take a debt security of Glen Alden, in exchange for their shares, without the consent of 2/3 of the $1.40 Preferred shares, voting as a separate class. The failure to disclose the nature and effect of those amendments made the above statements, as set forth in the Proxy Statement, false and deceptively misleading.

34. The acts described in paragraphs 33 and 34 hereof were accomplished through the use of the mails and the means of instrumentalities of interstate commerce and constituted a violation of §10(b) of the 1934 Act (15 U.S.C. §78j) and Rule 10b-5 of the Rules and Regulations of the SEC promulgated thereunder (17 CFR §240.10b-5).

35. Unless defendants Glen Alden and Schenley are immediately restrained and enjoined from effectuating the merger, pending the determination of this action, plaintiff and members of the class will suffer irreparable injury.

36. Plaintiff has no adequate remedy at law.

COUNT II

37. The parties in Count II are the plaintiffs Cole and Zisook and the defendants named in Count I, paragraph 5.

38. Jurisdiction of this Count II is founded on diversity of citizenship and amount. The amount in controversy exceeds, exclusive of interest and costs, the sum of TEN THOUSAND ($10,000) DOLLARS.

39. Paragraph 1(c) and all of Count I are made a part hereof by reference.

40. Under Section 251 of the General Corporation Law of the State of Delaware, appended as Exhibit "A: hereto, the merger is invalid and is of no force and effect under the laws and precedents of the State of Delaware for the reasons hereinafter set forth.

41. There is no plausible purpose of the merger which, in any respect, is advantageous to or will promote the interests of Schenley or its stockholders, except Glen Alden, the controlling stockholder. Schenley, as the surviving corporation of the merger, will have the same capitalization and business as it had before the merger was consummated. Schenley will not acquire, by reason of the merger, any additional assets or any new business of any kind. The party to the merger, Glen Alden Subsidiary Inc., has no assets and is not engaged in any business of any kind. The subsidiary is simply a shell which "has

not engaged in any business activities or entered into any transactions whatsoever except the Merger Agreement...nor will it engage in any business activities or transactions prior to the effective date of the Merger" (Plan and Agreement of Reorganization, ¶¶2.3(c), 3.3(a)). After the effective date of the merger, the subsidiary will be dissolved. Glen Alden will then become the owner of all the Schenley Preferred and Common shares previously held by its minority shareholders, none of which will be retired, nor will their rights and preferences be changed. The Schenley Cumulative Preference Stock, unchanged, will remain outstanding in the hands of the public.

42. The sole purpose and effect of the proposed merger was to force the transfer to Glen Alden of the minority's ownership of Schenley Preferred and Common without their consent, at a price which was at least 50% less than fair value, to the undeserved gain of more than $77,000,000 to Glen Alden.

43. The terms of the merger:

(a) were so grossly unfair to the minority stockholders of Schenley to the undeserved gain of Glen Alden, the controlling stockholder; and

(b) reflect such a clear abuse of trust, informed business judgment, discretion and fiduciary obligation by Glen Alden and the directors of Schenley, in entering into the Merger Agreement; and the merger

(c) was accomplished by a false and deceptively incomplete and misleading proxy statement and concealments of material facts relating to the value and market prices of the Schenley Common and Preferred shares

as to render the merger a fraud upon all stockholders of Schenley, other than Glen Alden.

COUNT III

44. Count III is alleged by plaintiffs Harry Walter Voege and Anna May Tunmore, as Trustees under the Last Will and Testament of Harry W. Voege against defendants Smith, Hopkins, Goldberg, Greenfield, Becker, Denmark, Heinze, Johnston, Chernow, Feldman, Clifford, W.P. Johnson, S. Kittay, M.L. Mendell, L.C. Lane, C.H. Perkins, Riklis, Schenley and Glen Alden.

Jurisdiction

45. This count is brought on behalf of all shareholders of Schenley including common shareholders and holders of Schenley $1.40 Convertible Preferred B, convertible into Schenley Common (other than defendant Glen Alden, its officers, directors and parents) who held such stock on February 23, 1971 and who sold such stock after February 23, 1971 at less than a price equivalent to $54 per Schenley common share or who are compelled by virtue of the merger of Schenley and a new subsidiary of Glen Alden to exchange, convert or surrender their Schenley securities for cash or cash and debentures of Glen Alden having a value in the aggregate which is equivalent to less than $54 per Schenley common share.

46. Jurisdiction of this Court is based upon Section 22 of the Securities Act of 1933, as amended to date (15 U.S.C. §77v) and upon Section 27 of the Securities Exchange Act of 1934, as amended to date (15 U.S.C. §78aa). This action is brought to enforce liabilities created by the

Securities Exchange Act of 1934, as amended to date, particularly §10(b) thereof, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder, particularly Rule 10b-5 (17 CFR §240.10b-5) as well as under the common law.

THE TRANSACTION COMPLAINED OF

47. At the times herein set forth, Schenley was and is engaged in the production and distribution of liquors. It had 7,991,777 outstanding common shares of which 6,887,089 shares are held by Glen Alden since 1968. The book value or equity of said common shares is presently $35.50 per share, including therein Schenley's 100% interest in The Buckingham Corporation, at Schenley's cost of $98,738,800. In the year ended December 31, 1970, Schenley earned approximately $3.01 per share. In November, 1970 Schenley agreed to sell its shares in The Buckingham Corporation to Northwest Industries, Inc. for $120,000,000 in cash and notes. Giving effect to such transaction, at its consummation which is scheduled for the end of March, 1971, and deducting applicable capital gains taxes, the book value of a share of Schenley Common would be $37.36. Valuing Schenley Common at 18 times Schenley's 1970 earnings of $3.01 per share, the valuation would be $54.18 per share. Valuing Schenley's common stock at 147% of book value ($37.36 per share), the valuation would be $54.92 per share. At the present time, the fair and reasonable valuation of

Schenley Common is not less than $54 per share. Giving effect to the consummation of The Buckingham sale, the cash position of Schenley would increase (after reserve for capital gains tax) by $113,621,640, and the portion allocable to Schenley's common shareholders is equivalent to $12 per share of Schenley Common.

48. In furtherance of a plan for Glen Alden to acquire the net assets of Schenley, Glen Alden expended in March, 1968, the sum of $75,610,080 in cash to acquire, in an arms-length transaction, from Lewis Rosensteil, Chairman of the Board of Schenley and his associates, at a price of $80 per share, an aggregate of 945,126 shares of the $1.40 par value Schenley Common (18.3%) equivalent after a 3 for 2 split, to 1,417,689 shares of Schenley 93-1/3¢ par value common stock at $53.33-1/3 per share.

49. The Stock Purchase Agreement between Glen Alden and Mr. Rosensteil provided that it was the intention of the parties that all of the holders of Schenley common stock be afforded an opportunity to sell their shares of Schenley common stock for a total consideration comparable to, or more favorable than the purchase price paid to Mr. Rosensteil and his associates. To carry out this intention, Glen Alden, in saidStock Purchase Agreement, agreed with the sellers therein named to make or cause to be made, an offer to purchase all other outstanding shares of Schenley common stock from the holders thereof on terms

not less favorable than the terms of a proposed offer set forth in the Stock Purchase Agreement.

50. By virtue of said Stock Purchase Agreement, plaintiffs and the other members of the class became third party beneficiaries of Glen Alden's contractual obligation to make an offer to purchase their shares of Schenley common on terms not less favorable than the terms of the proposed offer set forth in the Stock Purchase Agreement.

51. In furtherance of the aforesaid plan for Glen Alden to acquire the net assets of Schenley and to carry out its obligations under and its intentions expressed in the said Stock Purchase Agreement with Mr. Rosensteil and his associates, Glen Alden announced in August, 1968 a tender offer to acquire all of the remaining outstanding shares of Schenley Common held by the public, including the plaintiffs, whereby Glen Alden offered to exchange $100 aggregate principal amount of its 6% Sinking Fund Subordinated Debentures due August 15, 1988, plus the sum of $13 in cash for each one and one-half shares of Schenley 93-1/3¢ par value common stock tendered pursuant to the offer. Said tender offer was represented by Glen Alden to be not less favorable than the proposed offer set forth in the Stock Purchase Agreement.

52. Said tender offer provided for an arms-length transaction between Glen Alden and the public common stockholders of Schenley. The prospectus pursuant to which said offer was made stated (at page 2 thereof):

"The choices available to the holders of Schenley common stock include, but are not necessarily limited to, the following: (a) to accept the Glen Alden Exchange Offer and either hold or sell the Debentures received as a result thereof; (b) to continue to hold their Schenley common stock; or (c) to sell their Schenley Common Stock."

53. (a) Said prospectus further states (at page 7):

"After completion of the Exchange Offer, Glen Alden may (subject to future conditions) make a further tender offer to the remaining holders of Schenley common stock or propose to combine Glen Alden and Schenley. In connection with any such further tender offer or combination, the consideration to be received by the holders of Schenley common stock who have not accepted the Exchange Offer may be more than, less than, or the same as that provided in the Exchange Offer."

(b) The prospectus failed to disclose what future conditions would prompt or justify a lesser consideration than that provided in the said Exchange Offer, in view of Glen Alden's obligations under the Rosenstiel Stock Purchase Agreement, and in view of the vested third party beneficiary interest therein of plaintiffs and the other members of the class.

54. The holders of 67.7% of Schenley Common accepted said tender and received from Glen Alden $46,448,000 in cash plus Glen Alden 6% Sinking Fund Debentures due 1988

in the principal sum of $357,293,000, which Glen Alden admitted and contended was equivalent to a consideration of approximately $53.33-1/3 to $56.66-2/3 per share for the 93-1/3¢ par value Schenley Common.

55. The aforesaid admission and contention was made in 1968 by Glen Alden in successfully opposing an injunction application by a Glen Alden stockholder who contended that the consideration offered under the tender offer was equal to $75 per share for Schenley Common, and that such consideration was excessive and a waste of Glen Alden's assets. Glen Alden offered the opposing affidavit of its Vice-President - Finance and Treasurer, who affirmed and acknowledged under oath:

(i) That the offer provided an "eminently sound basis for the acquisition of the shares of Schenley not now held by Glen Alden";

(ii) That after consummation of the tender offer, assuming 100% acceptance by Schenley holders:

(a) Glen Alden's sales will now increase more than 106% from $485,103,000 to $1,003,099,000;

(b) Glen Alden's gross income will increase more than 96% from $537,791,000 to $1,057,293,000.

(c) Glen Alden's net income (all of which will inure to the benefit of Glen Alden's present stockholders) will increase more than 16% from $17,[illegible]1,000 to $20,519,000.

(d) All future increases in the net income of Glen Alden attributable to Schenley's business will increase the earnings per share of the Glen Alden stockholders.

(e) By reason of the subordinated feature of the Debentures to be issued, Glen Alden's ability to borrow additional monies should it require financing in the future, will be greatly enhanced.

(iii) That the proposed debentures clearly have a fair market value of substantially less than their face value, and that the management of Glen Alden estimates the debentures to be worth approximately 75% of their face amount which would place a value on Glen Alden's total offer of $85 per Schenley common share (before the 3 for 2 split) or $56.66 per share for Schenley 93-1/3¢ par value common stock.

(iv) That the book value of Schenley's assets is irrelevant to the reasonableness of the offer, and that an offer of 47% over Schenley's book value of $54.60 per common share (equal to $36.40 per share after the split) is fair and reasonable.

(v) That Schenley's earnings for the 12 months ended February 29, 1968 were $4.12 per share (equal to $2.75 per share after the split) and that a price-earnings ratio for liquor stocks of from 16 to 20 times earnings is fair and reasonable.

(vi) That it is highly likely that Glen Alden will be able to materially reduce its repayment obli-

gations under the Debentures by purchasing Debentures in the market at discounts from their face value.

(vii) That the probable value of the Debentures would be about 70% (maximum current value, 75%) of the par value of the Debentures.

56. Upon the aforesaid valuation principles, contended and acknowledged by Glen Alden, the injunction applications were judicially denied, and Glen Alden is now collaterally estopped to contend that it will not receive special benefits from 100% ownership of Schenley or that Schenley common stock is to be valued at less than 147% of book value, and at less than 18 times current earnings.

57. Plaintiffs and other holders of Schenley Common holding in the aggregate approximately 14% of Schenley Common elected to continue to hold their Schenley Common, and did not voluntarily accept approximately $54 per share for their stock in 1968. The class consists of such holders, and their successors in ownership of shares that were since sold by such holders.

58. There are presently outstanding 197,108 Schenley preference shares having a redemption value of $10 per share (total redemption price $1,971,080), 2,743,450 shares of $1.40 Schenley cumulative convertible preferred stock having a redemption value of $24 per share (total redemption price $65,842,000), and convertible at the rate

of 9/10 of a common share for each preferred share into 2,470,955 shares of Schenley common stock, and 7,991,777 shares of Schenley Common of which 6,887,089 shares are owned by Glen Alden (which it purchased in 1968 for an average consideration valued by it at $53-1/3 - 56-2/3 per share) and 1,104,688 shares are owned by plaintiffs and the other public minority common stockholders similarly situated.

59. On or about November 2, 1970, Schenley agreed to sell to Northwest Industries, Inc. for $120,000,000 in cash and notes, its 100% ownership of The Buckingham Corporation. This transaction is scheduled to close at the end of March, 1971. In its proxy statement dated on or about November 17, 1969, the holders of Schenley Common, and the holders of BHM Industries, Inc. Common (which BHM Industries Common, on the merger of Schenley and BHM Industries, Inc. in December, 1969, was converted into the $1.40 cumulative convertible preferred stock of Schenley) were advised that:

> "If after the consummation of the proposed merger, Schenley were to sell the outstanding stock of Buckingham, which it would then own, such sale would be taxable to Schenley at capital gains rates to the extent that the proceeds of sale exceeded Schenley's basis in the stock of Buckingham (which after the proposed merger will be the same as BHM's basis in said stock). Under proposed legislation presently pending in Congress, the maximum tax on long-term capital gains realized

by a corporation would be raised from the present 25% rate (excluding surtax) to a 30% rate. Although it is not possible at the present time to determine the exact amount of BHM's basis in the stock of Buckingham, the management of BHM estimates that its total basis is between approximately $80,000,000 and $90,000,000. This basis consists of approximately $32,970,000 derived from Schenley's former 52.66% stock interest in Buckingham with the balance being derived from the former public stockholders of Buckingham in the May 15, 1969 reorganization."

60. On completion of this transaction (after reserves for capital gains tax) the book value of Schenley common stock (if fully diluted) will be $36 per share, and the cash position of Schenley will be increased by $108,000,000. After giving effect to a contemplated distribution of $4.50 in cash on the 2,743,450 outstanding Schenley preferred shares (aggregating $12,345,525) the remaining cash of $95,655,000 would include $82,438,500 allocable to Glen Alden's 6,887,089 common shares, and $13,216,500 allocable to the 1,104,688 Schenley common shares held by plaintiffs and the other public minority common shareholders, at the rate of approximately $11.97 per share. If said $4.50 cash distribution to the preferred shareholders is enjoined, the net cash proceeds of $108,000,000 would be allocable to the common stock (on a fully diluted basis) at the rate of $10.31 per share, of which $71,005,888 would be allocable to Glen Alden's 6,887,089 common shares, $11,389,333 would be allocable to the 1,104,688 Schenley common shares held by the public minority common stockholders of Schenley, and $25,604,750

would be allocable to the holders of Schenley's 2,743,450 preferred shares (at the rate of $9.28 per preferred share.)

61. On or prior to February 26, 1971 the defendants wrongfully, unlawfully and improperly planned, colluded and conspired together to unjustly enrich Glen Alden at the expense of and to the detriment of Schenley's minority and public stockholders, by using Glen Alden's domination and control of Schenley, in a self-dealing transaction, to effect a merger which would enable Glen Alden to appropriate to itself $89,733,000 of the cash and notes to be received from Northwest Industries, Inc. or $28,727,112 more than the $71,005,888 share thereof allocable to Glen Alden as set forth in paragraph 60 hereof, by distributing to the public preferred stockholders of Schenley the sum of $4.50 per share, or $4.78 per share less than such stockholders' distributive share as set forth in paragraph 60 hereof, and by distributing to the public minority common stockholders of Schenley the sum of $5 a share, or $5.31 per share less than such stockholders' distributable share, as set forth in paragraph 60 hereof. In addition, pursuant to such plan and conspiracy, the class was to receive for their common shares (having a value of not less than $54 per share as alleged in paragraph 47 hereof) $30 per share in 7-1/2% 15 year Glen Alden senior subordinated debentures, having a probable market

value, according to the valuation principles acknowledged and contended for by Glen Alden, as alleged in paragraph 55 hereof, of not more than $21.60 applicable to each common share. Furthermore, pursuant to such plan and conspiracy the public holders of preferred shares (convertible into common) were to receive, in addition, for their preferred shares (having a value on conversion of not less than $48.60 per share) $27 per share in 7-1/2% 15-year Glen Alden senior subordinated debentures, having a probable market value, according to the aforesaid valuation principles, of $19.44 applicable to each preferred share. According to this plan, the consideration to be distributed to Schenley's minority public common stockholders would have a total cash value of $26.60 for each Schenley common share, having a present worth of at least $54 per share, to the damage of the minority common stockholders of at least $26.50 per share, or $30,268,450 in the aggregate, in which amount Glen Alden will benefit and profit and be unjustly enriched, at the expense of this portion of the class. Furthermore, according to this plan, the consideration to be distributed to Schenley's public preferred stockholders would have a total cash value of $23.94 per share (which is less than the $24 per share redemption value of such preferred shares) having a present worth of at least $48.60 per share, on conversion, to the damage of the public preferred shareholders of at least $19.66 per share or $53,977,613. Glen Alden will

benefit and profit and be unjustly enriched in the aforesaid sums, which aggregate $84,246,000, at the expense of the Class.

62. There were no conditions that occurred or exist since 1968 which would prompt or justify a lesser consideration to be offered to the Minority Stockholders of Schenley than that provided in the 1968 exchange offer, in view of Glen Alden's obligations under the 1968 Stock Purchase Agreement with Mr. Rosensteil and his associates, and the vested third party beneficiary interest therein of plaintiffs and the other members of the class, and in view of the further facts that in 1968, when Glen Alden adopted a valuation of 20 times Schenley's earnings for Schenley Common, Schenley's earnings were $2.75 per share, and such earnings are now $3.01 per share, and in 1968, when Glen Alden adopted a valuation of 147% of book value for Schenley Common, Schenley's book value was $36.40 per common share, and such book value, at the time the proposed merger is to be effective, will be $37.36 per share, after the Buckingham sale.

63. By virtue of the foregoing, the aforesaid plan, whereby the plaintiffs and the class are to become involuntary sellers of their Schenley Common having a value of not less than $54 per share, for a consideration valued at $27.50 per share, is unfair to the minority, is designed to injure the minority, and its effect is so grossly unfair to the minority as to be shocking and fraudulent. Said plan is subject to injunction and rescission under the case law of Delaware.

64. Glen Alden, as the Majority Stockholder and controlling and dominating person of Schenley, is in a fiduciary position to Schenley and its minority stockholders and it would be a violation of the fiduciary obligations of such position for Glen Alden to use its majority control and domination powers to effect a merger by means of a self-dealing transaction whereby the Minority Stockholders are to be compelled to become involuntary sellers of their Schenley stock for a grossly and shockingly inadequate consideration, in violation of their vested third party beneficiary rights under the 1968 Stock Purchase Agreement between Glen Alden and Rosensteil, particularly when Glen Alden is collaterally estopped to value the shares of Schenley common stock held by the minority upon principles which are inconsistent with those adopted by it in prior litigation, as alleged in paragraph 55 hereof.

65. (a) The foregoing plan constitutes, and the use by Glen Alden of its majority stockholdings in Schenley and its control and domination of Schenley's Board of Directors to effectuate the same, would constitute an act, practice, and course of business which operates or would operate as a fraud and deceit upon the minority public common stockholders of Schenley, including the plaintiffs, as a class, in connection with the forced sale of their Schenley shares under the proposed merger, in violation of

the prohibitions of Section 10 of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated by the Securities and Exchange Commission thereunder.

(b) In furtherance of said scheme, on May 21, 1971, a proxy statement was mailed to Schenley's shareholders. The Proxy Statement represented that after the sale of Buckingham, total revenues of Schenley would be reduced by $60,093,000, and operating net income of Schenley would be reduced by $4,640,000. The Proxy Statement omitted to state, among other things, that despite the Buckingham sale, Schenley would share in the upward surge of industry sales of distilled spirits and wine for 1971, which sales exceed sales for 1970 by at least $140,000,000, or at least 4%, and that Schenley's 1971 revenues will exceed the sum represented in the Proxy Statement by at least $24,000,000, with a resultant net income in excess of that represented in the Proxy Statement. By reason thereof, said Proxy Statement was false and misleading, and the approval of the merger will result from fraudulent, misleading and deceitful statements and omissions, in violation of §10 of the Securities and Exchange Act of 1934 and Rule 10b-5 promulgated by the Securities and Exchange Commission thereunder.

66. Plaintiffs, in behalf of themselves and in behalf of the class, and the class are entitled to a pre-

liminary and final injunction against the implimentation of the aforesaid plan, and the merger proposed thereby upon the terms set forth above, as well as a judgment declaring said plan to be null and void, cancelled and rescinded.

67. In the event that, prior to the trial of this action and the entry of judgment herein, said plan and merger is consummated upon the terms proposed, as set forth above, or as subsequently modified, without providing for a consideration having a presently realizable value of at least $54 per share to be paid to the public Schenley common shareholders for their shares, plaintiffs and the class are entitled to judgment against the defendants, jointly and severally, for their damages, including the fair value of their Schenley common shares, plus punitive damages, as well as for an accounting from the defendants, jointly and severally, of the profits and benefits resulting to them from the merger.

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77. In furtherance of said scheme on May 21, 1971 the Proxy Statement was mailed to Schenley shareholders. The Proxy Statement, among other things, omitted to state that shortly after said merger would be consummated it was Glen Alden's intention for its purposes and for the purposes of its parent, Rapid, and Rapid's principal shareholders, to use Schenley's assets in order to make a tender offer for Glen Alden's common shares. Said tender offer would serve no business purpose for Glen Alden and would further jeopardize its outstanding debt including the new 7-1/2% fifteen year Glen Alden senior subordinated debentures being offered to Schenley's minority shareholders for their Schenley shares.

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Schenley Common. Fund has been a shareholder of Schenley Industries, Inc. since at least March of 1970.

(e) HAROLD STILLER and MILDRED STILLER, are the joint owners of 100 shares of Schenley Preferred. They are citizens of the State of New York.

3. Defendant(s):

(a) SCHENLEY INDUSTRIES, INC. ("Schenley"), is a corporation organized under the laws of the State of Delaware and has its principal place of business in the State of New York. The shares of Schenley Common and Schenley Preferred have been and are listed on the New York Stock Exchange.

(b) GLEN ALDEN CORPORATION ("Glen Alden"), is a corporation organized under the laws of the State of Delaware and has its principal place of business in the State of New York. Glen Alden owns 86% of the outstanding Schenley Common.

(c) RAPID-AMERICAN CORPORATION ("Rapid") is a corporation organized under the laws of the State of Ohio and has its principal place of business in the State of New York. Rapid is the owner of at least 64% of the outstanding common stock of Glen Alden and has been since at least March 14, 1969.

(d) GLEN ALDEN SUBSIDIARY, INC. is a corporation organized under the laws of the State of Delaware, has its principal place of business in the State of New York and is wholly-owned by Glen Alden.

4. Upon information and belief, each defendant named below is a citizen of a state other than the State of Illinois or Florida:

(a) Defendant ISIDORE A. BECKER ("Becker"), since at least January 1, 1968, has been and is now the Chairman of the Board and Chief Executive Officer of Schenley; a director and executive officer of Glen Alden, and of its parent, Rapid. Defendant Becker owns none of the outstanding shares of Schenley and receives no compensation from Schenley. He is the owner of 17,500 shares of Glen Alden common stock and is the beneficial owner of 63,362 shares of Rapid common stock. Defendant Becker is paid an annual salary of $100,000 by Glen Alden and $125,000 by Rapid and McCrory Corporation ("McCrory") which is a majority-owned subsidiary of Rapid, in addition to deferred compensation and retirement benefits.

(b) Defendant BERNARD GOLDBERG ("Goldberg"), since 1966, has been and is now a director and President of Schenley, who owns 9,002 shares of Schenley common, 15,000 shares of Glen Alden common stock and options to purchase

the right to object to the materiality and relevancy of such facts to the issues:

THE UNDISPUTED FACTS

1. Defendant Schenley Industries, Inc. ("Schenley") was incorporated in Delaware. It is engaged in the business of producing, importing and selling of alcoholic beverages.

2. Defendant Glen Alden Corporation ("Glen Alden") is a Delaware corporation. Between 1968 and 1971, through subsidiaries, Glen Alden has been engaged in a variety of businesses. Between August 30, 1968 and June 18, 1971, Glen Alden owned 86% of the common stock and at least 84% of the voting power of Schenley.

Between March 20 and August 30, 1968, Glen Alden purchased 6,887,089 shares of the 7,979,747 outstanding Schenley common shares from approximately 13,000 holders of such shares for $404,925,331 (an average of $58.80 per share) as follows:

> 1,417,689 shares were purchased from Lewis S. Rosenstiel ("Rosenstiel"), then Chairman of the Board of Schenley, and six other related sellers ("The Rosenstiel Group") on March 20, 1968, for cash of $75,610,080, an average of $53.33 per share.
>
> 110,000 shares were purchased by Glen Alden on the New York Stock Exchange on April 26, 1968, for cash of $5,851,208, an average of $53.20 per share.
>
> 5,359,400 shares were purchased through a tender offer on August 30, 1968, for which Glen Alden paid $357,293,300 face amount of its 6% Debentures which Glen Alden estimated had a debt discount of 25% less or $267,969,975 plus $46,448,129 in cash and incurred fees and expenses of $8,359,867, a total of $322,777,971

or an average of $60.32 per share. This transaction is hereinafter referred to as the "Exchange Offer."

On May 10, 1971, defendant Rapid American Corporation ("Rapid") owned 63.3% of the ordinary voting power of Glen Alden.

3. At elections held between October 1, 1968 and June 17, 1971, Glen Alden caused to be elected defendants Isidore Becker, Bernard Goldberg, Paul Johnston, Walter Heinze, Howard Feldman, Milo Hopkins, Alber N. Greenfield, Russel Smith and David Chernow as directors of Schenley. Those defendants voted in favor of the merger of Schenley with Glen Alden which became effective on June 17, 1971. After June 17, 1971, Glen Alden and/or Rapid caused the election of all the directors of Schenley. Between 1965 and June 17, 1971, defendant Meshulam Riklis was a director, Chairman of the Board and Chief Executive of Glen Alden and a director, Chairman of the Board and President of Rapid; defendant Becker was a director and executive officer of Glen Alden and Rapid. Since on or about October 1, 1968, Becker was the Chief Executive Officer and Chairman of the Board of Schenley. While a director of Schenley, defendant Johnston was also a director of Glen Alden. Defendant Greenfield had been a director until May 1970 of a subsidiary of Rapid before becoming a director of Schenley and defendant Heinze while a director of Schenley was an executive officer of two subsidiaries of Glen Alden.

4. At December 31, 1970, Schenley had outstanding 7,991,777 shares of common stock; 2,538,864 shares of $1.40 Cumulative Convertible Preferred Stock ($1.40 Preferred) and 197,594 shares of Cumulative Preferred Stock ("Preferred

Stock"). The $1.40 Preferred was convertible into 9/10 of a share of common at the option of the holder.

5. Defendant Becker testified that, without prior discussion between the other directors of Glen Alden and before any written studies were made of the proposed merger, he and defendant Riklis, on February 24, 1971, recommended the terms of a proposed merger to the members of the Executive Committee of Glen Alden who approved the same. According to its minutes, the Committee was comprised of four directors, of which three were defendants Riklis, Becker and Johnston.

6. On February 25, 1971, a public announcement was made of the proposed reorganization of Schenley and the terms under which the latter would be merged with a wholly owned subsidiary of Glen Alden. Upon consummation of the merger, Schenley would become the wholly owned subsidiary of Glen Alden except for the Preference Stock. Each share of Schenley common stock was to be converted into $5.00 in cash and $30.00 principal amount of a new 7-1/2% Glen Alden Debenture ("Debentures") and each share of the $1.40 Preferred was to be converted into $4.50 in cash and a $27.00 principal amount of the Debentures.

According to Allen & Co., Inc., financial adviser to the Board of Directors of Schenley in connection with the proposed reorganization, the Debentures as modified on March 25, 1971, had a fair market value as of February 25,

1971 of approximately 80% of their stated principal amount. This valuation for the Debentures would result in a total consideration to the holders of Schenley common stock of approximately $29.00 per share and consideration to the holders of $1.40 Preferred of approximately $26.10 per share.

7. On February 25, 1971 the Schenley directors met, considered and unanimously approved the proposed reorganization "in principle" with "further authority to the officers to modify such terms and conditions in such manner as they in their discretion may deem necessary or desirable to effect such merger, all subject, however, to the receipt of an opinion of an investment banker to the effect that such terms and conditions, as finally determined, are fair and equitable to the shareholders of [Schenley]."

8. Defendant Chernow testified that prior to February 24, 1971 he had no knowledge that a proposal for the merger of Schenley and Glen Alden would be forthcoming from Glen Alden.

9. As shown by the March 25, 1971 minutes, Schenley's Board of Directors ratified the retention of Allen & Co., Inc. ("Allen"), investment bankers, as "investment advisor" to Schenley. Stanley Shuman, a director and a member of Allen's Executive Committee, was present at that meeting of the Board (Minutes, p. 3). Mr. Shuman recommended changes in the terms of the "reorganization" which defendant Becker, Chairman of Schenley's Board, stated was agreeable to the "Executive Committee of

Glen Alden Corporation", of which Becker was a member. Mr. Shuman stated that the terms, as changed, were fair and equitable to the stockholders of Schenley and the Board unanimously approved the proposed "reorganization" and authorized the taking of the action necessary for its consummation.

10. The minutes of the March 25, 1971 meeting stated "attached is a statement furnished by Mr. Shuman . . . subsequent to the meeting . . . summarizing his remarks". The statement was a letter dated June 3, 1971. With the exception of the June 3, 1971 letter, the minutes of the Board of Directors of Schenley do not disclose that any other written study, analysis or report as to the fairness of the proposed reorganization was considered by the directors of Schenley prior to March 25, 1971.

11. Defendant Riklis testified that the amount of consideration to be given under the proposed reorganization for the Schenley common and $1.40 Preferred shares was determined mainly by (i) the quoted market prices of the shares on the New York Stock Exchange during a period of approximately two years preceding February 24, 1971, and (ii) the desire of defendant Riklis and Glen Alden to give the $1.40 Preferred an amount per share of about $26.00, which would be the approximate equivalent of what a holder of Buckingham Common Stock would have received had there been a distribution to Buckingham stockholders of the proceeds from the sale of Buckingham stock and the $32,000,000 of cash and marketable

securities previously owned by Buckingham.

12. Pursuant to the proposed merger, Schenley was to merge with Glen Alden's newly-formed wholly-owned subsidiary that was organized solely for such purpose and thereupon Glen Alden would become the owner of all outstanding equity securities of Schenley, except the Preferred Stock which would remain unaffected by the merger. The reorganization made no change in the business of Schenley nor did it result in Schenley acquiring any new business or assets. Prior to and after the reorganization, Schenley and Glen Alden had not engaged in any similar business activities.

13. At the meeting of Schenley stockholders on June 17, 1971 the vote on merger was as follows:

	Shares	
	Common	1.40 Preferred
For the Merger	7,187,372 (6,887,089 owned by Glen Alden)	513,375
Against	200,406	547,711
Not Voting or Absent	591,969	1,459,137
Total Shares Outstanding	7,979,747	2,520,005
Vote	1 vote per share	1/10th of a vote per share

The holders of approximately 910,000 Schenley shares objected to the reorganization and demanded appraisal under Delaware law. A total of 114,988 shares of common stock and 572,966 shares of $1.40 Preferred withdrew or were dismissed from the appraisal proceedings.

14. A majority of the Schenley shares voting together having approved, the reorganization was declared effective on June 17, 1971 by the Board of Directors.

15. From January of 1966 to January of 1968, Richard Graham ("Graham") was either a vice president of defendant Rapid or assistant to defendant Riklis, the Chairman of its Board of Directors and its chief executive officer. Graham testified that during that period he prepared reports relating to Schenley "as part of a large program whereby Mr. Riklis, Rapid, McCrory (a majority-owned subsidiary of Rapid), and Glen Alden . . . had an interest in acquiring majority ownership in Schenley." Graham testified that Plaintiffs' Exhibit for Identification #5* is a true and correct copy of a report that was prepared by Graham and given to defendant Riklis.

16. Graham testified that he commenced the preparation of the Graham Report in late winter or early spring of 1966 and continued through February of 1967; he estimated it took "50 percent of his time for a period of six or seven months" (Graham, p. 36) during which he examined all the material

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* Hereinafter all of plaintiffs' exhibits for identification will be referred to simply as "Exhibit ".

filed by Schenley and its subsidiaries with the Securities and Exchange Commission (p. 39) as well as other source material described in his report.

17. In Sanders v. Riklis, a derivative stockholders suit instituted in the Supreme Court, New York County, in 1968, it was charged, among other things, that the $53.33 price per Schenley common share that Glen Alden had paid to the Rosenstiel Group and proposed to pay in its tender offer was excessive. In successfully opposing an attempt to enjoin the tender offer, Glen Alden submitted a May 2, 1968 affidavit of Bear, Stearns & Co., investment bankers ("Exhibit 6").

18. At the times stated below the unaudited balance sheets of Schenley show that, excluding Buckingham, Schenley's current trade account receivables, after reserves for allowances and doubtful accounts, amounted to:

(000 omitted)

12/31/67	$135,300
12/31/68	116,500
12/31/69	120,300
12/31/70	115,984
12/31/71	111,594

19. After the December 15, 1969 merger between Schenley and BHM, Buckingham became a wholly-owned subsidiary of Schenley. The latter received approximately $32,000,000 of cash and marketable securities that had formerly belonged to Buckingham and/or BHM.

20. At the times stated below, the inventory records of Schenley that were produced for plaintiffs' inspection (Cole 5) showed Schenley bulk in bond inventory (excluding Buckingham) amounted to:

(000 omitted)

12/31/67	$273,602
12/31/68	270,759
12/31/69	243,467
12/31/70	224,510
12/31/71	188,080
12/31/72	178,953

21. On November 13, 1970, Schenley entered into a letter of intent under which on February 26, 1971, it sold certain assets connected with its domestic wine business for $14,000,000, subject to adjustment.

22. Excluding Buckingham, Schenley's inventory of finished and in process case goods in relation to total inventory (which includes bulk in bond inventory) was as follows:

	Case Goods Inventory	Total Inventory
12/31/67	$26,868,000	$319,778,000
12/31/70	40,317,000	294,740,000
5/31/71	53,342,000	294,900,000
12/31/71	53,154,000	261,277,000
12/31/72	58,264,000	258,616,000

23. At December 31, 1970, Schenley, excluding Buckingham, had on hand cash and marketable securities of $65,816,000 as compared to $24,392,000 at December 31, 1967. At December 31, 1970, Schenley had on hand $13,784,126 at cost of Glen Alden 6% Debentures. At December 31, 1970, its long and short-term debts to lending

institutions had decreased since December 31, 1967 by $27,500,000.

24. On or about March 23, 1971, Forbes Magazine quoted defendant Riklis as saying:

> "When we started out, Schenley was $160 million into the banks and had $30 million in cash. Three years later, Schenley has got maybe $80 million in cash, and it's into the banks for $100 million. That's a $60-million reduction in the line, and a $50-million increase in the cash—$110 million difference in cash already. With the sale of Schenley's Buckingham subsidiary [under a Federal Trade Commission order], it'll be a $230-million difference. Next year, without Buckingham, Schenley will make as much as it made with Buckingham three years ago, and I'll be sitting with $200 million in cash. That's what I saw in Schenley—the great possibility of its being a huge cash generator, generating more cash than I put into it."

25. The May 14, 1970 agreement between Glen Alden and John Hancock Mutual Life Insurance Company ("John Hancock") amended the January 31, 1969 agreement between the parties to permit the extension of the due date on the General Bank Notes described in paragraph 26 below. If said Notes were not paid in full prior to February 1, 1971, Glen Alden was to pay John Hancock additional interest at the rate of one-half percent per annum on the outstanding indebtedness due the latter from Glen Alden.

26. In 1970, Glen Alden extended to February 1, 1971, $53,000,000 due on June 30, 1970 under a $133,000,000 credit agreement with a group of banks hereinafter called "General Bank Notes." As expressed in the January 27, 1971 minutes, it was the "considered opinion" of the Board of Directors that Glen Alden was not in a position to pay the General Bank Notes in full on February 1, 1971, but was able to pay $30,000,000 on account. It was the best estimate of the Board that the earliest date by which the balance of $22,977,000 would be paid was August 1, 1971 and the due date was extended accordingly.

27. The balance of $22,977,000 was paid on June 18, 1971, the day after the reorganization was consummated. In May 1970, Glen Alden borrowed $20,000,000 from the same banks, which was due on February 1, 1971. In January 1971, the banks had agreed to extend the maturity to August 1, 1971.

28. Schenley purchased from Glen Alden for $81,300,000 the $101,606,000 of Glen Alden's 7-1/2% Debentures and Schenley provided the $16,934,000 in cash that together with the Debentures were exchanged in the reorganization for the common and $1.40 Preferred shares held by the Schenley Minority Stockholders.

29. Between January 1, 1971 and June 30, 1971, Glen Alden did not obtain a new term loan from any lending institution in the amount of $60,000,000 or in any lesser sum.

30. Between January 1, 1971 and May 21, 1971, the 6% Glen Alden Debentures, which were given in 1968 in exchange, by Glen Alden, for the Schenley common, had a market value which ranged from 62-1/4 to 53-1/4 per $100 in face amount, as shown by the quoted prices of the 6% Debentures on the New York Stock Exchange. On May 20, 1971, the closing price was 57-1/2.

31. The 6% Debentures were rated "B" in investment quality by Moody's Financial Service and in Moody's Industrial Manual

> "Bonds which are rated B generally lack characteristics of the desirable investment. Assurance of interest and principal payments or of maintenance of other terms of the contract over any long period of time may be small." (Moody's Industrial Manual, 1970, pp. v, vi)

32. The 7-1/2% Debentures were also rated "B" by Moody's. In 1971, their market prices ranged from 67-1/2 to 79-3/4. In June and July 1971, the bonds were quoted on a when-issued basis at 68.

33. The 1969 and 1970 audited financial statements of Glen Alden stated:

D. Intangibles and Franchises

Intangibles represent the excess of unallocated cost of investments over equity in net assets of Schenley ($85,583,212) and other subsidiaries (1969—$34,198,763; 1970—$43,044,738). These net excess acquisition costs have been recognized by the management of Glen Alden as being similar in nature to intangibles which have not declined in value since acquisition. Accordingly, at the respective dates of acquisition, the management of Glen Alden adopted the policy of not amortizing these excess purchase costs so long as there is no diminution in value of the related investments.

Other intangibles are being amortized over periods not exceeding twenty years.

Franchises consist of Schenley contracts to import whiskeys, liquors, and other distilled spirits which, in the opinion of management, have continuing value and accordingly are not being amortized. //

34. The Rapid-American October 19, 1971 Prospectus at page 9 stated that the book value of Rapid common stock at January 31, 1971 was $23.79 per share and that such book value was:

> "... based upon common shareholders equity of $158,083,000 which includes 'excess of cost of investments over related equities' of $220,120,000 or 33.12 per share. In the opinion of the respective managements of McCrory and Rapid, such excess costs are similar in nature to intangibles which have not declined in value since acquisition of the related equities. See ... Note 5 of Notes to Financial Statements of Rapid ... included elsewhere herein."

35. The October 6, 1972 Proxy Statement of Glen Alden at page 25 stated that the book value of the Glen Alden common stock was $7.80 per share at December 31, 1971 and that:

"(a) The book value per share of Glen Alden Common Stock set forth herein is based upon common stockholders' equity of $136,297,000, which includes "excess of cost of investments in subsidiaries over related equities" of $102,174,000, or $5.85 per share. The book value per share of Rapid Common Stock set forth herein is based upon common shareholders' equity of $190,456,000, which includes "excess of cost of investments over related equities" of $193,479,000, or $26.91 per share. In the opinion of the respective managements of Glen Alden and Rapid, such excess costs are similar in nature to intangibles which have not declined in value since acquisition of the related equities. See Note D of Notes to Financial Statements of Glen Alden and Note 5 of Notes to Financial Statements of Rapid."

36. The Prospectus of Glen Alden dated August 8, 1968 contained an unaudited pro forma condensed balance sheet at pages 62-63 that purported to reflect the effect on Glen Alden's March 31, 1968 balance sheet of the proposed acquisition of 100% of Schenley's common stock. Note 4 to the balance sheet stated:

> "Glen Alden does not have sufficient information at the present time to make an allocation of the excess of cost of investment in Schenley over equity in net assets (estimated to be $148,580,000, based upon May 31, 1968 consolidated balance sheet of Schenley). To the extent any amount is allocated (a) to property, plant and equipment, it will be written off over the estimated remaining lives of such assets and (b) to intangibles, it may or may not be amortized depending on whether any diminution in value is anticipated."

37. At August 30, 1968 and at December 31, 1970, Glen Alden allocated the following amounts as the excess of cost over equity in net assets of Schenley of its investment in Schenley common shares:

Intangibles	$85,583,212	
Franchises	50,000,000	
	$135,583,212	or $19.70 per share of Schenley common stock owned by it.

By reason of its investment in Schenley common shares, Glen Alden, at August 31, 1968, and at December 31, 1970, as shown in its 1970 10-K, reflected the amount of its equity in the net assets of Schenley at $268,656,047 and $296,393,808 which amounted to $38.95 and $43.02 per share, respectively. The total per share was $58.65 at

August 31, 1968 and $62.72 at December 31, 1970.

38. At May 31, 1971, Schenley reflected its plant and property at $108,502,000 less accumulated depreciation of $62,415,000 or a net of $46,087,000. It made gross additions and retirements to its plant and property as follows:

		Gross Property Additions	Gross Property Retirement
Year Ended August 31,	1963	3,484,619	2,596,707
	1964	3,725,078	712,936
	1965	6,607,136	1,383,639
	1966	4,366,874	2,029,927
	1967	5,765,940	985,125
	1968	7,962,908	1,497,412
December31,	1969	4,849,136	4,505,531
	1970	4,790,820	2,742,808
	1971	4,990,242	17,120,382
		46,542,753	33,574,467

NET FIXED ASSETS 12/31/71	46,146,804
GROSS FIXED ASSETS	107,637,418

39. The financial statements of Schenley for the years ended August 31, 1968, four months ended December 31, 1968, and the calendar years ended December 31, 1969 and 1970, do not reflect any writedowns or writeoffs of Schenley's inventory of bulk whiskeys, other spirits and wines or of other products, materials and supplies.

40. The financial statements of Schenley for the calendar year ended December 31, 1971 reflect:

(a) Extra Ordinary writedowns of inventory as follows:

(000 omitted)

	Before Taxes	After Taxes
Used Cooperage	$13,547	$ 7,044
Light Whiskey	7,193	3,740
Americana Bottling Supplies	1,000	520
Aged Spirits	183	95
	$21,923	$11,399

(c) No writedowns on bulk inventories of Kentucky Bourbons whose stated cost at December 31, 1971 was $97,884,300; non Kentucky Bourbon ($22,494,300); Tennessee Whiskey ($4,719,300); Brandy ($11,390,700); Canadian Whiskey ($26,648,200) or, of Bulk Scotch ($8,622,000) (Cole 14).

41. The following chart shows the amount of Schenley's inventories, as of the dates indicated, of certain bulk whiskeys for which new production had been discontinued and which were being phased out without replacement:

(000 omitted)

	Dec. 31, 1970	Dec. 31, 1971
Non-Kentucky new wood	26,780	22,495
Corn Whiskey	6,584	4,636
Total	33,364	27,131

42. Schenley's tax liabilities of approximately $13,100,000 on its 1971 gains from the sale of Buckingham and other assets were reduced by approximately $9,000,000 because of writedowns of about $20,000,000 on its inventories of empty barrels, light whiskey and supplies and equipment.

43. Schenley paid the prime interest rate on its short-term debt in the years 1969 through 1971. During the calendar year 1970, the prime interest rate averaged 8.2% on Schenley's outstanding short-term debt. By May of 1971, the prime rate had fallen to about 5.29% and the interest rate on prime commercial paper was approximately 5%. At December 31, 1970, Schenley's short-term debt was $110,750,000. At March 31, 1971, short-term debt was

$87,300,000.

44. In each of the calendar years 1972 and 1973, Schenley paid dividends to Glen Alden of $26,000,000. In 1970 and in the first quarter of 1971, Schenley paid dividends on its common stock and $1.40 Preferred Stock of 35¢ per share. In 1970 total dividends paid on such shares and the Cumulative Preferred Stock amounted to approximately $14,440,000.

45. The minutes of the Board of Directors of Schenley for 1970 and 1971 do not show that the directors of Schenley considered or discussed increasing the dividend on the Schenley common stock.

46. There is set forth below, to the extent produced by Schenley, the bulk sales of in bond inventory, their cost and gross profit.

(000 omitted)

Year Ended

	8/31 or 12/31 1968	12/31 1969	12/31 1970	12/31 1971
Sales	$18,440	$24,328	$19,513	$8,924
Cost of Sales		18,035	13,068	6,922
Gross Profit		6,293	6,445	2,002

47. Three applications to enjoin the merger were made in 1971. All of these applications were denied.

48. The following is a summary of market information for Schenley common and preferred stock for the times set forth therein.

Trading History of Schenley Common Stock

1960-1970

	High	Low
1960	24 7/8	13 1/4
1961	23 1/4	14 1/2
1962	18 1/4	10 3/8
1963	15 3/4	12 3/4
1964	16	12 5/8
1965	26 5/8	14 7/8
1966	29 3/8	16 5/8
1967	46 1/4	20 1/2
1968	57	32 3/8
1969	44 3/4	20 3/4
1970	28	19 1/4

A 110.19

1970 TRADING VOLUME STATISTICS

	Common	$1.40 Convertible Preferred	Common & Convertible Preferred
Common Shares Outstanding	7,991,777	2,535,764	10,527,541
Shares held by Glen Alden	6,887,089	0	6,887,089
Remainder	1,104,688	2,535,764	3,640,052
Number of Stockholders	8,249	9,281	17,530
Average Number of public per Stockholder	134	273	208
1970 Trading Volume	428,500	876,300	1,304,800

TRADING VOLUME FOR SCHENLEY

	Common	$1.40 Convertible Preferred	Common & Convertible Preferred
1970			
January	19,100 Shs.	29,000 Shs.	48,100 Shs.
February	31,200	37,900	69,100
March	28,200	88,100	116,300
April	16,200	74,500	90,700
May	35,100	60,300	95,400
June	32,600	49,000	81,600
July	24,700	54,500	79,200
August	25,400	69,800	95,200
September	64,800	119,100	183,900
October	89,400	163,600	253,000
November	20,900	70,400	91,300
December	40,900	60,100	101,000
Total 1970	428,500	876,300	1,304,800
1971			
January	66,500	156,700	223,200
February	75,900	180,700	256,600

A 110.21

MONTHLY PRICES FOR SCHENLEY COMMON AND CONVERTIBLE PREFFERED

	Common		$1.40 Convertible Preferred	
	(High)	(Low)	(High)	(Low)
1969				
December	23 3/4	20 3/4	21 1/4	18 1/4
1970				
January	24 7/8	20 1/8	21 3/4	18
February	24	20 1/2	21 3/8	18 1/4
March	24 1/2	22	22	19 3/4
April	25	21	22 1/4	18 1/2
May	21 7/8	19 1/4	19 5/8	17 1/4
June	21 1/2	19 1/2	19 1/4	17 5/8
July	22	19 3/4	19 1/2	17 1/2
August	23 7/8	20 1/4	21	18
September	27	21 1/2	24 1/2	19 1/2
October	28	25	25	22 3/4
November	26 1/8	23 5/8	23 3/4	21 1/4
December	27	24 3/4	24 1/8	22
1971				
January	29	25	26 1/4	23 1/4
February	31 7/8	28 5/8	28 1/2	25 7/8

49. The following is a summary of the market prices of the common stock of the Buckingham Corporation and BHM Industries, Inc., for the times set forth therein.

	High	Low
Calendar Year:		
1965	$16 15/16	$12 1/8
1966	17 7/8	11 7/8
1967	22	13 1/2
1968	30 3/4	18 7/8
1969		
1st Quarter	31 3/4	26 1/8
2nd Quarter	29 3/4	21 3/4
3rd Quarter	23 3/4	19
4th Quarter thru November 14	22 3/4	19 3/4
November 14, Closing Price	$21 7/8	

50. On May 10, 1971, Schenley sold its 100% stock interest in Buckingham to Northwest for a price of $120,000,000, consisting of $103,000,000 in cash and $17,000,000 principal amount of 9-1/2% notes of Northwest maturing March 1, 1979. The purchase price was subject to reduction after December 31, 1975 by reason of Schenley's guarantee of a specified amount of "depletions" (i.e., case sales by wholesalers to retailers) of Cutty Sark Scotch whisky and other Buckingham products during the five years ending December 31, 1975. In connection with the sale, Schenley and Glen Alden guaranteed $23,000,000 principal amount of Northwest 9-1/2% notes maturing March 1, 1986 which were simultaneously sold by Northwest to three insurance companies at their principal amount to finance par of the cash portion of the purchase price.

APPENDIX A TO IV

Plaintiffs' Contentions As to LIABILITY and DAMAGES

Defendants' liability is based on:

A. Their misrepresentations of material facts and the omission of material facts in a Proxy Statement dated May 21, 1971 in violation of Section 14(a) of the Securities Exchange Act of 1934 (the "Act") and Rule 14a-9 of the SEC;

B. Their failure to make the required disclosure between August 1968 and June 17, 1971 of the business and financial condition of Schenley and their engaging in acts, practices and a course of conduct which violated Section 10(b) of the Act and Rule 10b-5 thereunder of the SEC;

C. Their violation of their fiduciary obligations to deal fairly and openly with the holders of Schenley $1.40 Preferred and common stock other than Glen Alden (the "Minority Stockholders") in fixing the terms of the June 17, 1971 reorganization of Schenley.

Subsections A and B set forth the facts upon which plaintiffs contend the defendants are liable to the plaintiffs under Section 14(a) and 10(b) of the Act. The plaintiff class, as defined by Judge Weinfeld's decision of May 1973, consists of all Minority Stockholders as of February 24, 1971, the day before the announcement of the reorganization. Those members of the class who were stockholders as of May 10, 1971, the record date, assert their federal claims under both Section 14(a) and Section 10(b) of the Act; whereas those members of the class who sold their shares after February 24, 1971 and prior to May 10, 1971 make their federal claim only on the basis of Section 10(b).

Following subsection B is a discussion of culpability, materiality and causation, which are elements of the lawsuit under both Sections 14(a) and 10(b).

Subsection C then discusses elements of a common law action as well as the facts upon which that action is based.

A. THE PROXY STATEMENT MISREPRESENTED AND OMITTED TO STATE MATERIAL FACTS RELATING TO THE VALUE OF THE SCHENLEY SHARES

1. The Proxy Statement gave an untrue and misleading description of the amount and source of the funds that Schenley would transfer to Glen Alden in connection with the reorganization.

In order to conceal the amount of Schenley's liquid assets that would be transferred to Glen Alden, the Proxy Statement disclosed only that the proposed reorganization "will permit Glen Alden to transfer funds from Schenley to itself including a substantial part of the proceeds from the recent sale of Schenley's subsidiary . . . Buckingham, subject only to applicable restrictions in Schenley's various loan agreements." It was stated that "these funds . . . will provide a source for payment of current maturities of Glen Alden long term debt" of $47,000,000.

However, the actual dollar amounts of such "substantial funds" and "restrictions" were known to defendants and should have been stated, and the following material facts also were not disclosed in the Proxy Statement:

(a) When the reorganization became effective on June 17, 1971, Schenley would supply from its funds $16,934,000 in cash and would pay not $47,000,000, as indicated in the Proxy Statement, but $81,285,000 to Glen Alden to purchase the $101,600,000 principal amount of Glen Alden Debentures. In the reorganization, the

cash and Debentures were the sole consideration to be given in exchange for the minority held Schenley shares.

(b) Before the reorganization became effective, at Schenley's request the restrictions in the loan agreements were amended to increase from $79,910,000 at December 31, 1970, to $115,000,000 the amount that Schenley would be permitted to pay for the acquisition of its capital stock in connection with the reorganization.

(c) Before its 1968 investment of $404,975,000 in 6,887,089 Schenley common shares, or $58.65 per share, Richard Graham, an officer of defendant Rapid-American Corporation, the parent of Glen Alden, and Bear Stearns & Co., Glen Alden's then financial adviser, were of the opinion that three categories of assets of Schenley were held in amounts in excess of requirements for the operation of its business and could be reduced and liquidated into cash or its equivalent as follows:

Category	Amount to be Realized in $		
	Bear Stearns & Co.		Graham
Inventory of whiskeys and wines	120,000,000	--	130,000,000
Accounts Receivable	20,000,000	--	30,000,000
Proceeds of proposed sale in 1967 of 52% interest in Buckingham, net of taxes		--	45,000,000
Marketable Securities	30,000,000	--	-0-
TOTAL	170,000,000		205,000,000

The reasonableness of the price paid by Glen Alden to acquire the Schenley shares in 1968 was established by these excess assets and the $170,000,000 to $205,000,000 realizable upon their reduction to required levels.

(d) Bulk whiskeys had been produced by Schenley's prior management in substantially greater quantities than was needed to meet current and anticipated sales. As a result, its 1967 inventories were, in the opinion of Glen Alden's management, between $120,000,000 and $130,000,000 more than needed to meet its current and anticipated needs. When Glen Alden took over the management of Schenley in 1968, a Liquidation Program was immediately instituted to convert into cash the 1967 excess bulk whiskey inventory and other marginally profitable inventory items and assets. Trade accounts receivable of $135,300,000 were to be reduced immediately by $20,000,000 to $30,000,000 by requiring prompt payment of outstanding accounts, the return of previously shipped goods and by limiting future shipments to current needs of wholesalers. The marketable securities of $30,000,000 which were owned at the end of 1967 by Schenley's 52% owned subsidiary, the Buckingham Corporation, were not needed to operate the latter's business. By June 1969, those securities had increased to about $32,000,000 but could not be transferred to Schenley so long as the 48% minority interest was outstanding.

(e) It was expected that the liquidation of the excess inventory and trade receivables could be accomplished within four to seven years. The stated purpose of the Liquidation Program was to create a fund or "bank" of $170,000,000 to $205,000,000 for exclusive use by and for the benefit of Glen Alden to reduce the latter's debts and scale down Schenley's debt.

(f) The fund of $205,000,000 and more was to be realized sooner than expected. At the end of 1969, through a reorganization by which Schenley exchanged its $1.40 Preferred shares for the 48% minority interest in Buckingham, the latter paid the $32,000,000 to Schenley. By December 31, 1970, Schenley had reduced its trade accounts receivable by $19,300,000. In October and November 1970, Schenley had committed the sale of its marginally profitable wine business for about $14,000,000 and the sale of Buckingham for $120,000,000. By December 31, 1970, Schenley had reduced its 1967 excess bulk whiskey inventories by $72,100,000. Except for the sale of Buckingham and the wine business, the foregoing was not disclosed in the Proxy Statement.

Before February 24, 1971, when Glen Alden announced the proposed reorganization, defendants knew that by the end of May 1971 Schenley would have cash and marketable securities of approximately $191,000,000 (rather than $162,000,000 as indicated in the Proxy Statement), an increase of $166,700,000 over the $24,392,000

in such assets that Schenley had on hand on January 1, 1968, excluding Buckingham. By the end of May 1971, Schenley would owe credit institutions $191,600,000, $48,700,000 less than was owed at the end of 1967. The Proxy Statement did not mention this $215,000,000 overall improvement since 1968 in Schenley's financial condition which was due in the main to the results of the Liquidation Program and the sale of Buckingham. The Proxy Statement did not disclose that at least $140,000,000 represented excess liquid assets that were not required for the operation of Schenley's business.

The Proxy Statement did not disclose that on January 27, 1971, the management of Glen Alden had certified to one of its creditors, John Hancock Mutual Life Insurance Company ("Hancock"), that Glen Alden was not in a position to pay at least $22,997,000 of its debts that was due on February 1, 1971, and that the earliest such debts could be paid was August 1, 1971. As a result, the interest rate on the $35,000,000 loan from Hancock was increased by one-half of one percent. In January 1971, payment of an additional $20,000,000 due banks on February 1, 1971 was extended to August 1, 1971, which was disclosed in the Proxy Statement.

By not revealing the foregoing facts prior to and in connection with the proposed reorganization, defendants avoided the risk of disclosing information that might encourage holders of the $1.40 Preferred shares to exercise their right to convert their Preferred shares into Schenley common stock. Such conversion was likely to cause Glen Alden's ownership of 86% of the common shares to be diluted to below 80% and could have diluted it to as low as 67% if all the $1.40 Preferred shares were converted. In such event, not only would Glen Alden's share of the Schenley excess liquid assets be reduced but Glen Alden would lose its right to include Schenley in its federal consolidated income tax return, a substantial source of cash for Glen Alden. Under the tax agreement between Glen Alden and Schenley relating to such returns, Schenley paid the full amount of its federal tax liabilities to Glen Alden computed on a separate return basis, a substantially greater amount than Glen Alden's consolidated income tax liability.

The Proxy Statement failed to disclose that the proposed reorganization would confer no economic benefit of any kind upon Schenley and would not serve any need or plausible business purpose of Schenley. By resorting to the defective disclosure herein set forth, defendants concealed the true purpose of the reorganization which was to deprive the minority shareholders of the fair value of their share of Schenley's surplus assets.

2. <u>The Proxy Statement failed to disclose that Schenley had on hand not less than $115,000,000 and as much as $140,000,000 of liquid assets that were not needed to operate its business.</u>

(a) Giving effect to the Liquidation Program and the sale of Buckingham, it is undisputed that by the end of May 1971, Schenley would have on hand about $191,000,000 of cash and marketable securities, of which a minimum of $115,000,000 and a maximum of $140,000,000 were not needed to operate its business. While defendants will contend that no part of such a large block of cash and near cash assets was in excess of the amount required to operate Schenley's business, the fact remains that when the merger became effective on June 18, 1971, Glen Alden caused Schenley to pay out $98,000,000 in cash in order to consummate the "reorganization", after obtaining the required consent of Schenley's institutional lenders to the payment of as much as $115,000,000 for the same purpose, an action that could not have been taken and a consent that would not be forthcoming if it was not apparent that these were excess funds. The plaintiffs contend that based on Schenley's requirements and the size of its remaining liquid assets, an additional $25,000,000 or more of Schenley's cash and near cash was not needed for the operation of its business and was available for withdrawal

or reinvestment by Schenley. As proof of this it should be noted that in 1968 and 1969 and in earlier years, Schenley, operating independently of Buckingham, conducted and expanded its business with balances of no more than about $21,000,000 in cash and marketable securities, a fact also not disclosed in the Proxy Statement.

(b) It appears that for the purpose of the 1971 reorganization, defendants determined the value of the Schenley Common and $1.40 Preferred at $29.00 and $26.10, respectively, by the market prices of Schenley's Common shares and by arbitrarily deciding, according to defendant Riklis, that the $1.40 Preferred shares, having been issued in the December 1969 reorganization to the minority holders of Buckingham Common stock, should be valued at about $26.00, which would approximate their worth had Buckingham been sold to Northwest Industries in 1969 rather than in 1970. Defendants attributed no additional value to Schenley's surplus cash and marketable securities which amounted to $14.00 or more per share, assuming full conversion of the $1.40 Preferred. Defendants thus deprived the plaintiff class of $14.00 of the per share fair value of their shares merely by concealing the facts relating to the existence and size of Schenley's excess current assets.

3. <u>The Proxy Statement contained financial statements that understated Schenley's past income.</u>

(a) The Proxy Statement (p. 43) stated that an estimated $13,100,000 of income tax was payable on the 1971 gain from the sale of Buckingham Corporation, whereas defendants knew that the estimated income tax would amount to about $4,100,000 by reason of write-downs which were then known to be available and permissible at year end 1971 on the following items of inventory:

(i) At December 31, 1970, empty used barrels were carried on Schenley's financial statements at about $10.00 per barrel for a total of $16,495,000. Their resale value had declined at December 31, 1970 by at least 50% of such stated book value.

(ii) At December 31, 1970, 264,600 barrels of light whiskey, which had been redistilled from corn and Tennesee whiskey between 1968 and 1970, were carried on Schenley's financial statements at a stated book cost of $18,271,500. Such cost reflected the original cost to Schenley of the corn whiskey and resulted in a cost for the light whiskey that was approximately 50% more than what it would have cost Schenley to produce light whiskey by original distillation.

(iii) Corn whiskey and Tennesee whiskey, redistilled for use as neutral grain spirits, were carried on Schenley's books at costs which ranged from 43¢ to 92¢ per gallon when the cost of original distillation of such spirits was about 35¢.

(iv) Discontinued bottling supplies were written down by $1,000,000.

(b) The earnings of Schenley before taxes were understated in the annual reports for the years 1969-71 and at page 22 of the Proxy Statement by the following undisclosed non-recurring excess costs that resulted from using higher cost redistilled neutral grain spirits.

Year Ended December 31, 1969

Usage 5,753,000 OPG at per record cost.....	$3,986,000
at normal cost of $.35.....	2,013,000
Excess Cost.....	$1,973,000

Year Ended December 31, 1970

Usage 6,886,000 OPG at per record cost of $.9546.....	$6,574,000
at normal cost of $.35	2,410,100
1970 Excess Cost.....	$4,163,900

Year Ended December 31, 1971

Excess Cost.....	$3,795,000

4. <u>The pro forma financial statements were materially untrue and misleading.</u>

(a) The Proxy Statement contained a pro forma balance sheet whose stated purpose was to show the effect of the sale of Buckingham on Schenley's financial condition as if such sale had occurred on December 31, 1970, and $95,400,000 of the proceeds were retained by Schenley. The stated purpose of the pro forma income statement was to show the effect on Schenley's income for the year ended December 31, 1970, if the sale had occurred on January 1, 1970, and assuming $12,500,000 of the proceeds was then used to reduce Schenley's long-term debt and $93,400,000 was used to reduce its short-term debt. It was stated that such assumption "is not intended as a representation that the proceeds of sale will be applied to reduce Schenley's short-term debt."

(b) The above quoted statement was untrue in that Schenley did not propose to reduce short-term debt with proceeds of sale and the statement was misleading because it concealed the fact that Schenley had already decided to use the proceeds to pay $81,285,000 to Glen Alden for its 7-1/2% Debentures and to advance $16,934,000 in cash without which the reorganization could not be consummated because Glen Alden itself lacked the funds necessary for that purpose. The statement also

concealed the fact that Schenley had obtained the consent of its lenders of long-term debt to use up to $115,000,000 of its funds to accomplish the reorganization.

(c) The pro forma income statement reflected a reduction in interest cost on short-term debt of $7,675,000 by reason of the above assumption. However, it was not disclosed, as required, that by March of 1971 Schenley's short-term debt had already declined by over $20,000,000, and interest rates had declined from 8.22% to about 5-1/2% with the result that absent the "assumption", Schenley's 1971 interest cost in any event would be at least $4,000,000 less than it was in 1970.

(d) In connection with the pro forma income statement, it was not disclosed, as required, that instead of using the $98,000,000 for the reorganization, had Schenley invested in the 9-1/2% Notes of Northwest Industries, Inc., it accepted or guaranteed in connection with the sale of Buckingham to Northwest, or in comparable securities, its interest income would have been higher by at least $1,100,000. Under any circumstance, it was known by May of 1971 and not disclosed that in 1971 Schenley's interest income would be at least $1,100,000 greater than in 1970, due to the expanding amount of its excess liquid assets and their greater utilization for income bearing investment in 1971.

(e) The pro forma income statement also failed to disclose, as required, the non-recurring excess cost in 1970 of neutral grain spirits that was reflected in that statement. See ¶3(b) above.

The failure to make these adjustments (or even to disclose their existence) had the effect of understating the pro forma income by over $9,000,000 before taxes and $4,700,000 after taxes. Had those adjustments been made, Schenley's total income would have been $27,200,000 or $3.01 per share, primary earnings, or $2.64 per share, fully diluted, instead of $2.42 and $2.18, respectively, as shown on pages 43 and 15 of the Proxy Statement.

5. The Proxy Statement did not fairly or adequately disclose that the management of Glen Alden, who fixed the terms of the proposed reorganization, was of the opinion on May 21, 1971 that $62.72 per share was at least the value of Glen Alden's investment in 86% of the outstanding Schenley Common shares at December 30, 1970. Glen Alden reflected the value of its investment in Schenley Common shares at their August 31, 1968 acquisition cost of $58.65 per share, of which $38.95 represented the August 31, 1968 net asset value of the Schenley Common shares and $19.70 per share represented the excess of Glen Alden's cost over net asset value. At

December 31, 1970, the net asset value of the shares had increased to $43.02 per share and the excess cost of $19.70 per share remained the same. It was the opinion of Glen Alden's management expressed to their public accountants and auditors that prior to June 17, 1971 (as well as thereafter) the Schenley Common shares had not declined in value since acquisition in 1968 and for that reason Glen Alden had not amortized the excess costs attributable to the investment.

6. <u>In stating that it was the opinion of Allen & Company Incorporated ("Allen Opinion") that the terms of the proposed reorganization were "fair and equitable", the Proxy Statement was untrue and misleadingly incomplete by failing to disclose</u>:

(a) The Allen Opinion did not consider the existence or amount of Schenley's excess current assets as set forth in paragraphs 1 and 2 above.

(b) The Allen Opinion did not consider the understatements in income and in the pro forma income of Schenley as set forth in paragraphs 3 and 4 above.

(c) The Allen Opinion was based in part on the mistaken belief that "60% of Schenley's total

inventory consisted of bourbons and bulk whiskey for use in blended whiskey" (Allen Opinion, p. 25), whereas in fact, as the defendants knew, the smallest part of Schenley's inventory consisted of bourbons and bulk whiskey for such use.

(d) Contrary to the conclusions stated at page 15 of the Allen Opinion, the Schenley overhead reduction program was not responsible for higher profits in 1970 and the largest part of the decrease in Schenley's 1968 earnings was due to non-recurring transitional costs.

(e) The Allen Opinion did not consider or give weight to the fact that Glen Alden's management was of the opinion that no decline had occurred in the value of its investment in Schenley as set forth in paragraph 5 above.

(f) The Allen Opinion that the terms were fair and equitable was based primarily on the market prices of the Schenley shares for the fifteen months preceding February 24, 1971, during which period of time the facts stated in (a), (b) and (e) above were not disclosed to the market place and were not reflected in the quoted market prices.

7. <u>The Proxy Statement failed to disclose the rating and market prices of other Glen Alden Debentures</u>.

While the 1971 Proxy Statement, at page 5, stated,

> "It is expected that the fair market value of the Debentures [the 7-1/2% Glen Alden Debentures into which the shares of Schenley preferred and common are to be converted under the merger] on the effective date of the proposed reorganization [the merger] will be less than their face amount",

the Proxy Statement failed to disclose the following material facts relating to the value of the Glen Alden 7-1/2% Debentures that were to be exchanged for Schenley shares in the proposed reorganization:

(a) There was outstanding $357,300,000 principal amount of 6% Glen Alden Debentures whose quoted market price on the New York Stock Exchange ranged from 62-1/4 to 53-1/4 per $100 face amount between January 1, 1971 and May 21, 1971. On May 20, 1971, the closing price was 57-1/2.

(b) The 6% Debentures were rated "B" in investment quality by Moody's Financial Service. Bonds rated "B" are those

> "which . . . lack characteristics of the desirable investment. Assurance of interest and principal payments or of maintenance of other terms of the contract over any long period of time may be small." (Moody's Industrial Manual, 1970, pp. v, vi)

8. The Proxy Statement failed to disclose the basis upon which the Schenley minority were evaluated. Had such disclosure been made, the unfairness of the merger terms would have become apparent.

(a) It is undisputed that in the reorganization, Glen Alden based the value of the Schenley shares on recent market prices and the desire to give the holders of the $1.40 Preferred shares the equivalent of about $26.00 per share, which represented the per share value of the Buckingham common stock, assuming the shares were sold for $152,000,000 in 1969. (Undisputed Fact #13) The Proxy Statement failed to disclose the foregoing basis of evaluation. The Proxy Statement also failed to disclose that Glen Alden and the directors of Schenley, in determining the fairness of the terms of the merger, ignored the large amount of Schenley's excess cash and liquid assets, its past and future earnings and book value. The Proxy Statement also failed to disclose that a Delaware court, in determining the fair value of the Schenley shares in an appraisal proceeding, or a state or federal court, in granting relief from an unfair merger, would consider and weigh these important criteria of value.

(b) In any case, market prices would be entitled to little or no weight where, as here, important factors bearing on the value of the Schenley shares were concealed

from the market place and the readers of the Proxy Statement, i.e., (i) the source and large amount of Schenley's excess cash and marketable securities; (ii) Schenley's earnings and pro forma earnings which exceeded those shown in the Proxy Statement; and (iii) the opinion of Glen Alden's management that its investment of about $62.00 per share in Schenley common stock had not declined in value since acquisition. The combined weight of those other factors would give the Schenley Common and $1.40 Preferred shares a value substantially in excess of the $29.00 and $26.10 price that defendants attributed to those shares by their erroneous method of evaluation.

(c) Furthermore, as defendants' experts previously admitted (and as is the fact), the $1.40 Preferred, being convertible into 9/10 of a share of common at the option of the holder, was worth 9/10 of the value of the common rather than $26.00, as determined by defendants' improper method of valuation.

(d) The Proxy Statement gives the false impression that negotiations with respect to the reorganization had actually taken place between the directors of Schenley and Glen Alden. The Proxy Statement fails to disclose the undisputed facts (#6-10) that (i) the directors of Schenley had no knowledge prior to February 24, 1971 that a merger proposal would be forthcoming from Glen Alden;

(ii) the directors of Schenley had made no investigation or study of the feasibility or fairness of the proposed reorganization prior to or after February 24, 1971; and (iii) that no negotiations as to the terms of the reorganization had taken place between Schenley and Glen Alden prior to or after February 24, 1971.

(e) The Proxy Statement also failed to disclose that on February 24, 1971, without prior discussion between the other directors of Glen Alden and before any studies were made of the proposed merger, defendants Riklis and Becker fixed the terms of the merger, which were approved by members of the Executive Committee of Glen Alden on the same day. Four directors, of which three were defendants Riklis, Becker and Johnston, were members of the Committee.

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2. The Terms of the Reorganization Were So Grossly Inadequate and Detrimental to the Members of the Class as to Constitute a Clear Abuse of Fiduciary Duty by Glen Alden and the Directors of Schenley to Deal Fairly and Openly.

It is beyond dispute that Schenley's directors, Glen Alden and Rapid as controlling stockholders of Schenley, had a fiduciary duty to deal fairly and openly with the Minority Stockholders in the reorganization. The discussion under the Section entitled "DAMAGES", which follows, shows that the terms of the reorganization were unfair; and the discussion above under the Section entitled "Liability - Proxy Statement" shows that the defendants did not inform the "Minority Stockholders" of the required material facts bearing on the fairness of the reorganization.

V DAMAGES

The members of the plaintiff class are in the position of defrauded sellers of securities who, after the announcement of the terms of the reorganization, were either misled or forced into selling their shares on the open market, or into accepting the inadequate consideration under the terms of the reorganization. They are entitled to be put in substantially the same position they would have been in absent the misrepresentations. Restoring the class to their former position as Minority Stockholders of Schenley is not in the best interests of the class. As sellers of securities, members of the class are entitled to damages that are the monetary equivalent of rescission, i.e., cash equal to the fair value of their shares.

Plaintiffs contend the fair value of their shares is not to be determined, as defendants contend, by the market prices that prevailed within the fifteen-month period prior to the February 25, 1971 announcement of the reorganization. Those market prices are not controlling and are entitled to little or no weight in determining value. Schenley market prices, among other things, did not reflect favorable factors that were concealed from the market place, such as, the growing amount since 1969 of Schenley's excess cash and marketable securities and, particularly, the success of Schenley's Liquidation Program, commenced in mid-1968 and continuing through 1971 and thereafter.

Properly value is to be determined here by a consideration of all relevant factors, including, among others, the amount of excess liquid assets and Schenley's going concern value. Plaintiffs contend that, properly evaluated, the Schenley Common and $1.40 Preferred shares (which were convertible into 9/10 of a common share) had a worth of not less than $48.00 and $43.20, respectively, per share at the time the reorganization became effective, determined as follows:

> At least $14.00 per common share represented the excess cash and marketable securities which were not needed to operate Schenley's business.
>
> At least $34.00 per common share represented the going concern value of Schenley as determined by plaintiffs' financial expert, in accordance with conservative principles of appraising stocks for purposes of merger.

Glen Alden itself reflected the value of its investment in the common stock of Schenley as of December 31, 1970 at $62.72 and, in 1970, 1971 and 1972, had expressed the opinion in its financial statements that its investment in Schenley had not declined in value since it was acquired in 1968 at a cost of $58.65. In the appraisal proceeding in Delaware, the appraiser, on September 17, 1974, concluded that the value of the Schenley Common and $1.40 Preferred was $43.87 and $39.48, respectively. The appraiser's decision is being appealed by all parties.

Whether determined by Glen Alden's opinion, by the Delaware appraiser or by plaintiffs' expert, the value of

the Schenley stock was substantially above the $29 per common share package which the Minority Stockholders received in the reorganization.

Plaintiffs also contend that a class member is entitled to receive the fair value of his shares entirely in cash, rather than the $5.00 in cash and the $30.00 face amount of Glen Alden Debenture (which defendants estimate would have a market value of about $24.00), that was given in exchange for a common share and the 10% less that was given for a $1.40 Preferred share. Accordingly, each member of the class who still holds the Debentures would be entitled to cash plus pre-judgment interest upon tender of the Debentures and the interest received thereon. Those who sold the Debentures would receive cash plus pre-judgment interest less the proceeds from the sale of the Debentures and the interest received thereon to date of sale.

Because Schenley was a corporation organized in Delaware, the members of the class were entitled to the statutory right of appraisal. The material misstatements and omissions in the Proxy Statement also had the injurious effect of causing the holders of about 2,610,000 Schenley shares to forego the exercise of their statutory appraisal rights. In ignorance of such defects in disclosure, holders of approximately 705,000 shares withdrew their requests for appraisal. At a minimum, those who owned Schenley common and $1.40 Preferred shares are entitled to receive in cash $43.87 and

$39.48 per share, respectively, representing the appraised value of the shares as presently determined in the statutory appraisal proceedings currently pending in Delaware. Under Section 28 of the Act, a member of the class, whether or not he was a party to the Delaware appraisal proceeding, would be entitled to receive cash damages of the higher of the amount fixed as the value of the Schenley shares in (a) the Delaware appraisal proceedings; or (b) in this action.

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VI Exhibits

The parties agree that exhibits bearing the letter "A" opposite their number may be received in evidence without objection. Within ten days after this order is signed, each party shall serve the other party with specific objections to the admissibility of the exhibits hereinbelow listed.

Plaintiffs' exhibits are:

Exhibit # for identification	
1.	The Schenley Proxy Statement dated May 21, 1971
2.	The Schenley Proxy Statement dated November 17, 1969
2(a)	The Schenley Proxy Statement dated September 11, 1968
3.	The Glen Alden Prospectus dated August 8, 1968
3(a)	The Glen Alden Proxy Statement dated April 9, 1970
3(b)	The Glen Alden Proxy Statement dated March 31, 1971
4.	Preliminary Prospectus of Lorillard Corp. dated April 19, 1968
5.	The Graham Report dated February 6, 1967
5(a)	The Graham Report dated February 6, 1967 -alternate version submitted in Sanders v. Rillis.
6.	Affidavit of Alan C. Greenberg, sworn to May 2, 1968
7.	Annual Report of Schenley Y/E 8/31/68
8.	" " " " " 12/31/69
9.	" " " " " 12/31/70
10.	" " " " " 12/31/71
11.	" " " " " 12/31/72
12.	" " " " " January 31, 1974
12(a)	Schenley 10-K 1971
12(b)	Schenley 10-K 1972

13. Schenley Profit & Loss, Balance Sheet Before Audit Reclassifications 12/31/68

14. " " " 12/31/69

15. " " " 12/31/70

16. " " " 12/31/71

17. " " " 12/31/72

17A Schenley Quarterly Balance Sheets

17B Schenley Balance Sheet as of May 31, 1971

18. Schenley Budgets 1971 Budgets

19. " " 1972 Budgets

20. Schenley Summary Analysis of Operations Y/E 12/31/71

21. " " " " " 12/31/72

22. 1971 Profit Plan Schenley only

23. Reconciliation prepared by H. Baum
Domestic Sales Bulk Whiskey

24. Bulk Sales Per answers to Interrogatories in Gibbons
(2 pages)

25. Schedule of Bulk Sales June 1968- 12/31/71

26. Schedule of Domestic Bulk Whiskey Sales 1972

27. Canadian Schenley Direct Bulk Sales 1972

28. Canadian and Long John Bulk Sales 1968-1971

29. Letter from ST&B to SEC dated 6/8/71

30. Summary of Bulk in Bond Inventory
1968 through 1972 (Cole 14)

31. Inventory Blue Books, January 1, 1968, 1969, 1970, 1971

31(a) Inventory Blue Book, January 1, 1972

32. Inventory Blue Book, January 1, 1973

33. Schenley Summary of Inventory 1966-1972
(Cole 5)

34. Marketing Profit Summary, Whiskey Co's (Excl. Dreyfuss) By Product type for 1968, 1969, 1970 (Cole 16)

34(a) Same title as #34 for 1970 and 1969 and showing sales revenue and marketing profit

35. Brand Marketing Profit & Loss Statement 12 Months: ended 8/31/68 (Cole 16)

36. ended 12/31/69

37. ended 12/31/70

38. ended 12/31/71

38(a) Summary of brand marketing profit and loss, 1968-1971

39. ended 12/31/72

40. Canadian Schenley Distilleries Ltd. and Subsidiary Company Case sales by type 8/31/68, 12/31/69, 70, 71 and 72.

41. Long John Case Sales 8/31/68, 12/31/69 and 1971.

42. Case Billings by Product Type 1968, 1969, 1970

43. Case Sales by Type. Workpaper for page 45 5/21/71 Proxy Statement

44. Case Sales by Type 1966-1970 showing "Bulk Converted"

45. Distributorship Division - Cases Sold 1968-1971

46. Dewars Scotch, Case Sales, sales revenues, cost of sales, marketing profit

47. Dewars Scotch (Cole 18, 19, 23, 24)

47(a) Dewars Scotch License Agreement (Cole 41)

48. Excerpt N.Y. Times 11/21/72 Re Isidor A. Becker Cole 1972

49. Affidavit of Stanley S. Shuman, sworn to June 7, 1971

49(a) Supplemental Affidavit of Stanley S. Shuman, sworn to June 8, 1971

49(b) Affidavit and Supplemental Affidavit of Wilmet H. Kidd III, sworn to June 8, 1971

50. Proxy Statement of Glen Alden and Rapid dated Oct. 6, 1972

51. Prospectus of Rapid dated October 19, 1971

52. Memo dated Aug. 25, 1970 William Shuster to Harold Morris (Cole 20)

53. Two page workpaper from Glen Alden "Cost of 6,387,089 shares of Schenley Common Stock".

54. Minutes of Executive Committee of B/D of Glen Alden(Cole 81)

55. Minutes of B/D Glen Alden (Cole 82)

56. Loan Agreement dated January 31, 1969 between Glen Alden and John Hancock Mutual Life Insurance Company ("Hancock Agreement")

57. Amendment to Hancock Agreement dated 5/14/70

58. Amendment to Hancock Agreement dated 12/1/69

59. Resolution of B/D of Glen Alden dated 1/27/71

60. Correspondence re Hancock Agreement

61. Loan agreements and amendments between Prudential Insurance Co. of America and Schenley ("Prudential Agreement") (Cole 84)

62. Correspondence re Prudential Agreement

63. Loan Agreement, amendments and correspondence between Schenley and Mellon National Bank & Trust Co.

64. Minutes of meeting of B/D of Schenley (Cole 46)

65. Schenley Common Stock Ratios 1961-1970 (Cole 76)

66. Buckingham - Financial Statements, 1968-4 mos. ended 4/30/71

67. "LJR Draft" - 2/11/71 Notice of Annual Meeting Stockholders

68. Letter dated March 26, 1971 from ST&B to SEC enclosing preliminary copies of Proxy Statement

69. Letter dated April 29, 1971 from SEC to ST&B

70. Letter dated May 7, 1971 from SSB to SEC

71. Printers Proof Proxy Statement dated March 6, 8, 10, 11, 19, 24, 1971 and printers proof bearing dates in April 1971, in the possession of Schenley

72. Glen Alden Long Term Notes and Debentures Payable Balance at 12/31/70 (Cole 95)

73. Federal Reserve, Monthly Chart Book, Sept. 1973

74. Forbes Magazine 3/15/71

74(a). Meshulam Riklis thesis - expansion through financial management

75. Minutes of Schenley Board of Directors May 26 through November 20, 1969 (#24-4)

76. Printers Proof October 6, 1969 (Cole 47)

77. Printers Proof October 7, 1969 (Cole 48)

78. Loan agreements Glen Alden with ten named banks dated July 26, 1968 (Cole 56)

79. Loan agreements Glen Alden with ten named banks dated November 15, 1968

80. Affidavit of Homer McK. Rees - sworn to July 17, 1969 (Cole 53)

81. One page dated 3/31/71 - relating to "Cost Reduction Program" (attached to Cole 33)

82. Arthur Anderson & Co. ("A. & Co.") workpaper Comparison of Results of Operation Fiscal 1968 and Fiscal 1967 (Cole 91)

83. Breakdown of $6,316,000 used in Shuman aff'd p. 15 (Cole 87)

84. Joseph Gardner Workpaper -Neutral Grain Spirits 1969-1970

85. Opinion dated June 26, 1967 of A. & Co. with accompanying statement (Cole 92)

86. Workpapers of A. & Co. relating to preceding exhibit (Cole 92(a))

87. Haskins & Sells ("H & S") workpapers Extraordinary Items - 12/31/71 (Cole 59)

88. H & S Workpapers Used Cooperage (Cole 61)

89. H & S Workpapers - Valuation of Empty Barrels (Cole 62)

90. H & S Workpapers - Empty used wood activity 12/31/69 and Bulk Position at 12/31/69 (Cole 63)

91. H & S Workpapers - Used Barrel Disposals Fiscal 1968 (Cole 64)

92. H & S Workpapers - Neutral Grain Spirits Distilled from Corn Whiskey 12/31/69 (Cole 65)

93. Deposition of Joseph Lubin in Mathes, et al. v. Meshulam Riklis, et al.

94. Hearing before Referee Samuel A. Neuberger in Sanders v. Riklis.

94(a). Report of Referee Samuel A. Neuburger in Sanders v. Riklis.

95. Judgment and Order in Sanders v. Riklis.

96. H & S Workpapers Escrow account as of 12/31/71, Schenley liability to Minority Shareholders.

97. Letter dated December 15, 1971 from Glen Alden to SEC and reply of SEC to Glen Alden letter dated on or about January 5, 1972 (copies to be supplied by Glen Alden).

98. February 14, 1972 letter of FFHS & J to Judge Weinfeld.

99. Tender offer by Glen Alden dated October 8, 1971.

100. Complaint for injunction and judgment for permanent injunction in Securities and Exchange Commission v.Glen Alden Corporation, USDC, SDNY, both dated August 7, 1968.

101. Schenley's answers to Plaintiffs' Interrogatories 1, 2 and 3.

102. All printers proof in the possession of Fried, Frank, Harris, Shriver & Jacobson of the Schenley Proxy Statements dated November 17, 1969 and May 21, 1971.

103. H & S Workpapers - 1971 Schenley Interest Expense, Interest Expense-Net, Interest Income and Other Income.

104. H & S Workpapers - 1970 Schenley Interest Expense, Interest Expense-Net, Interest Income and Other Income.

105. Glen Alden answers to Plaintiffs' Interrogatories.

106. Excerpts from Federal Reserve Bulletins. Interest Rates (3 pages).

107. S & P Liquor Industry Survey dated July 25, 1971 and August 5, 1971.

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108. Dow Jones Industrial - Monthly Closing Averages.

109. FFHS & J letter to HO - April 8, 1974.

110. FFHS & J letter to HO - March 18, 1974.

111. Glen Alden Proxy Statement dated 5/19/72.

112. Transcript of Examination before Trial of defendant Riklis in Gibbons action.

113. The report of Hayden, Stone, Inc. relating to 1972 merger of Rapid and Glen Alden.

114. Glen Alden 10-K, 1971

114(a). Glen Alden 10-K, 1970

114(b). Glen Alden 10-K, 1969

114(c). Glen Alden 10-K, 1968

114(d). Rapid American 10-K, January 31, 1975

115. Letter dated October 10, 1969 from SSF & F to SEC with copy of proposed consent decree (Cole 52).

116. Letter dated November 18, 1969 - SSF & F to SEC.

117. Memorandum of Understanding, Schenley and Northwest dated October 30, 1970 (Cole 50).

118. Stock Purchase Agreement, Schenley and Northwest dated 5/10/71 (Cole 51).

119. Schedule Barrels on Hand on 1/1/68 and on 1/1/72 of New and Used Wood Spirits, Excluding Brandy, Light Whiskey, Neutral Grain Spirits, Gin, Rum and Scotch (Cole 29 corrected).

120. Kentucky New Wood On Hand and Depletions 1968 - 1971 (Cole corrected).

121. H & S Workpapers December 31, 1968-Analytic Review (Cole 34).

122. H & S Workpapers, Analytic Review September 30, 1969 9/30/69 & 9/30/68 (Cole 35).

123. H & S Workpapers Reserve for doubtful accounts Accounts Receivable Collectibility (Cole 36).

124. Summary of Inventories, Schenley Industries and Consolidated Companies 12/31/70 (Cole 38).

125. Alcoholic Beverages Executive Newsletter #16, 18 3/19/71 (Cole 39)

126. Statistical Release IRS (Cole 40).

127. Number of listings by marketeers appearing on Table No. 2 (Cole 42).

128. H & S Workpapers - Cost of Inventories, Whiskey Utilization 12/31/68.

129. Used barrels exported yearly (Cole 60).

130. H & S Workpapers - Inventory Reserve Acct. 26.00 12/31/68 (Cole 67).

131. H & S Workpapers - Compliance with Glen Alden Corp. Loan Agreements dated July 26, 1968 and November 15, 1968 (Cole 58).

132. H & S Workpapers 12/31/69 Computation of Effect of changing barrel depreciation life (Cole 75).

133. H & S Workpapers - Direct cost of sales 12/31/69 (Cole 71).

134. H & S Workpapers - Inter-office communication re Change in Accounting Procedure 12/31/69 (Cole 72).

135. H & S Workpapers - Scotch Whiskey Sales Reserve 12/31/71 (Cole 73).

136. Journal Voucher 12/31/70.

137. H & S Workpapers - Other income and expense 12/31/71 (Cole 69).

138. Sale of wine business.

139. Extraordinary items December 31, 1971.

140. Loan Agreement dated October 8, 1971 between Glen Alden & Chase Manhattan & eight other banks.

141. Restriction relating to Glen Alden Loan Agreement dated October 8, 1971 as it affects Schenley.

142. All press releases and public announcements regarding Schenley and Buckingham.

143. All transcripts of hearing, briefs, etc. in Vouge v. Becker.

144. All transcripts and papers in Greene v. Schenley.

On notice to the parties, at any time within thirty days before the scheduled trial commencement date portions of transcripts to depositions to be read at trial, witnesses or exhibits may be added to this Order without the Court's permission. Thereafter, an application must be made to the Court for permission to make such additions to this Pre-Trial Order. The application shall state the reasons why such additions were not set forth in this Pre-Trial Order.

Copies of all schedules, compilations or other written material containing financial, accounting or statistical information which any party intends to offer in evidence or use as an aid to or basis for the testimony of a witness, including an expert witness, shall be served on the other parties at least twenty (20) days before the scheduled trial commencement date. Written specific objections to the admissibility of any exhibits that may be added to this Order, as herein provided, shall be served within ten (10) days after the receipt of copies of such exhibits.

The parties hereby stipulate as follows:

(1) If signed copies of the transcripts of the depositions of defendants Chernow, Becker, Goldberg and Riklis have not been delivered to lead counsel for plaintiffs within thirty (30) days after this Order is signed, then the signing of those transcripts shall be deemed to have been waived;

(2) The deposition of defendant Riklis taken on August 28th and 29th, 1973, in E. F. Gibbon v.

Schenley Industries, Inc., Court of Chancery, Newcastle County, Delaware, Civil Action No. 3746, be deemed as though it were taken in the instant action;

(3) at least thirty (30) days before the scheduled trial commencement date the defendants shall serve upon plaintiffs' lead counsel answers to plaintiffs interrogatories relating to experts and plaintiffs may serve additional answers to defendants' interrogatories relating to answers.

VII

Plaintiffs contend that the issues to be tried are:

(a) The Proxy Statement.

1. In the respects set forth in SectionIV (A) and in plaintiffs' answers to defendants' interrogatories, did the Proxy Statement contain statements which, at the time and in the light of circumstances under which the same were made, were false or misleading with respect to a material fact, or which omitted to state a material fact, necessary in order to make the statements made therein not false or misleading?

2. Were members of the class injured by one or more of the misrepresentations or omissions to state a material fact?

3. What is the measure of damages to which members of the class are entitled?

4. Did defendants derive gain or profit from the reorganization for which they are required to account to the class?

(b) The 10(b) claims:

1. In the respects set forth in Section IV (B) and in plaintiffs' answers to defendants' interrogatories, did the defendants:

(a) employ any device, scheme or artifice to defraud; or

(b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading; or

(c) engage in any act, practice, course of business which operated or would operate as a fraud or deceit upon the Minority Stockholders in connection with the reorganization of Schenley?

2. Did the defendants know or should they have known that they committed any of the acts described in the preceding paragraph?

3. Were members of the class injured by any of the defendants' acts outlined in paragraph L?

4. What is the measure of damages which members of the class are entitled?

5. Did the defendants gain or profit from such acts for which they required to account to the class?

(c) The common law claim:

1. Was the reorganization authorized by the laws of the State of Delaware?

2. Were the terms of the reorganization fair and equitable to the Minority Stockholders?

3. Did Glen Alden or the directors of Schenley violate their fiduciary duties to the Minority Stockholders in fixing the terms of the reorganization?

4. What was the fair value of the Schenley shares on June 17, 1971, when the reorganization became effective?

5. What is the measure of damages to which members of the class are entitled?

6. Did Glen Alden or Schenley or both gain or profit from the reorganization for which they are required to account to the class?

Defendants contend the issues to be tried are:

1. Was the proxy statement materially false and misleading in violation of Section 14(a) of the Securities Exchange Act?

2. If the answer to question 1 is yes, what damages were caused to the plaintiffs by virtue thereof?

3. Can plaintiffs recover damages for an alleged fraud from which they benefited?

4. Were defendants participants in a scheme to depress the market price of Schenley stock?

5. Has there been a violation of Rule 10b-5 by any defendants in connection with the purchase or sale of

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Schenley stock?

6. If the answer to questions 4 or 5 is yes, what damages were caused to the plaintiffs by virtue thereof?

7. Do plaintiffs state a claim for damages under the law of the State of Delaware?

8. If the answer to question 7 is yes:

(a) Does this Court have jurisdiction of such claim?

(b) Is such claim a proper class action?

The parties by their counsel hereby consent to the entry of this Pre-Trial Order.

Dated: New York, N. Y.
January , 1975

_____
HERMAN ODELL
Lead Counsel for Plaintiffs

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON

By:_____
Attorneys for Defendant Glen Alden Corporation

RUBIN, BAUM, LEVIN, CONSTANT & FRIEDMAN

By:_____
Attorneys for Defendants Rapid-American Corporation and Meshulam Riklis

_____
MILTON B. SEASONWEIN
Attorney for Defendant Schenley Industries, Inc.

SIMPSON, THACHER & BARTLETT

By:_____
Attorneys for Defendants Isidore A. Becker, Bernard Goldberg, Paul A. Johnston, David A. Chernow, Walter O. Heinze, Howard Feldman, Milo B. Hopkins, Russell G. Smith and Albert N. Greenfield

SO ORDERED

_____
U.S.D.J.

that length of time so I do have the flavor from the memoranda, so have that in mind as you make your remarks.

MR. ODELL: Your Honor, may I say this. What I am really hoping to do is give you today what happens to be the wisdom that is distilled from those memoranda.

THE COURT: Very good.

MR. ODELL: First, as to the cast of characters, we have four corporations involved here, Rapid-American Corporation, Glen Alden Corporation, Schenley Industries and Buckingham Corporation. The four companies are interrelated and under common control.

As to the individual defendants, our main defendants here are Meshulam Riklis, who is the chief executive officer of Rapid-American, also the chief executive officer of Glen Alden and while neither an officer nor director of Schenley, I believe the proof will show that it was Mr. Riklis who was the prime mover of all four corporations.

The second principal individual defendant in this case is Mr. Becker whom, I believe it is fair to say, was the number two man in this whole hierarchy of corporations, number two man to Mr. Riklis.

Mr. Riklis and Mr. Becker were large stockholders of Rapid-American and Glen Alden Corporation but owned no

1 lzesb

2 shares of Schenley.

3 Rapid-American Corporation owned 63 percent of

4 the common stock of Glen Alden and had actual legal control

5 of Glen Alden Corporation.

6 Glen Alden Corporation in 1968 bought 86 percent

7 of the common stock of Schenley and shortly thereafter

8 nominated and elected a new board of directors for Schenley.

9 So it is fair to say, certainly, that Glen Alden

10 had absolute control of Schenley.

11 Now, at the time that Glen Alden acquired its

12 first interest in Schenley, Schenley owned 53 percent of the

13 stock of Buckingham Corporation. Buckingham Corporation was

14 one that was engaged in a very small but very lucrative

15 business. It was the exclusive distributor in the United

16 States for a very popular brand of Scotch called Cutty Sark.

17 Just a few more of the events there that follow

18 from that:

19 First, as I said, Schenley owned 53 percent of

20 Buckingham and 47 percent of Buckingham was owned by public

21 stockholders and in December of 1969, the 47 percent interest

22 of Buckingham owned by the public was converted into $1.40

23 convertible preferred stock of Schenley in a merger that

24 took place on December 15, 1969.

25 In June of 1971, the $1.40 preferred shares of

1 lzesb

2 Schenley, all of which was owned by the public, were

3 eliminated in a merger as a result of which Schenley became

4 a 100 percent owned subsidiary of Glen Alden.

5 In 1972, Glen Alden merged with Rapid-American,

6 its parent, and the name of the merged company, although

7 Glen Alden was the surviver, its name was changed as the

8 surviving corporation to Rapid-American Corporation.

9 I hope that doesn't confuse you as much as it did

10 me for a while.

11 Of Course, our clients here are the plaintiffs

12 who held some 3,600,000 shares of Schenley common stock and

13 $1.40 preferred stock. That broke out to roughly 1,100,000

14 shares of Schenley common stock and about 2,500,000 shares

15 of preferred stock.

16 Now it is important to the facts of this case

17 and I think it is a thread that is most significant in this

18 case that Glen Alden had a number of subsidiaries. It was

19 a conglomerate that was engaged in a number of businesses and

20 it owned 100 percent of a number of these different

21 subsidiaries.

22 The only subsidiary it did not own 100 percent of

23 prior to the time of this merger in 1971 was Schenley and

24 prior to 1969, it did not own 100 percent of Buckingham

25 because up until that time, Schenley owned 53 percent of

Buckingham and Schenley in turn was the subject of being a subsidiary, an 86 percent owned subsidiary of Glen Alden.

The important fact that I believe should be kept in mind throughout this whole series of events that took place prior to June 1971 is that Schenley as the 86 percent owned subsidiary of Glen Alden and Buckingham as the subsidiary, 53 percent of which was owned by Schenley, that both of those companies had a lot of cash and had a potential for generating a lot of cash.

That was not true of Glen Alden during this period and it was not true of the other subsidiaries. To the extent the other subsidiaries of Glen Alden had any significant amounts of cash, since they were 100 percent owned, there was no problem in getting cash up to Glen Alden from the 100 percent owned subsidiaries but the real big chunks of cash here prior to June of 1971 were in Schenley and in Buckingham.

Now, when Buckingham was merged with Schenley in 1969, Schenley for the first time had access to the cash of Buckingham and at that time, there was some $32 million of cash and marketable securities that I believe no one will contend was anything but surplus cash in the covers of Buckingham.

Most of that, most of the marketable securities

and that amount of cash and marketable securities shortly after the merger were passed up to Schenley, but at that point Schenley was not in a position to pass its surplus cash up to Glen Alden because of the outstanding minority position that was owned here by the $1.40 convertible preferred and common stock.

In the merger the common stock received the package of $5 in cash and a new 7-1/2 percent Glen Alden debenture which was valued, at least on the defendants' side of this case, that is, Glen Alden and Schenley, that that package was worth $29.

Briefly, the $5 in cash, the cash was worth that amount, and there was a $30 face amount debenture at Glen Alden, which Glen Alden and Schenley's financial advisors felt would be worth, had a fair market value of about 80 percent of face. In other words, the $30 debenture was worth $24.

So that we had a $29 package for the common and the $1.40 preferred since it was convertible into 9/10 of a share of the Schenley common, was given a package that was worth roughly 9/10 the $29 or roughly $26, and that broke up, I believe, into $4-1/2 in cash and something a little less than a $30 debenture, but the total was 10 percent of the $29.

Let me turn briefly to our views of the defendants' liability.

We are concerned here with the Federal Securities Laws, particularly the Securities and Exchange Act of 1934, and the Proxy Solicitation Provisions of that act which is Section 14-A of the 1934 Act and Rule 10-B-5 of the same act, both laws, I'm sure, your Honor is quite familiar with.

I would like to say -- I would like to summarize quickly the main objectives of both the Federal Securities Law and the common law in the area of a merger of this kind.

I believe it is fair to say that both the securities law and the common law had basically the same objective in a situation of this kind where you have the majority dealing with the minority, insiders dealing with outsiders.

I think the purpose of both the common law and the Federal Securities Laws was to equalize the bargaining power between insider and outsider. The Federal Securities Laws, particularly the 1934 Act and Section 14-A and 10-B-5, sought to equalize the bargaining power between the insiders and outsiders by requiring full disclosure of the facts bearing on a transaction, full disclosure of facts that an investor should have before making a decision as to

what or how he should react to a particular proposal, whether it be a buy or a sell of a stock.

It is important to keep in mind in this case that what is essentially involved in this merger is a sale of stock by the minority ~~to~~ the outsiders ~~from~~ To the insiders. The merger, whatever else can be said about it, pro and con, it was a sale of stock ~~by~~ To those who had all the inside information about this stock, its company, its value, its propsects, it earnings, and they were going to buy this stock from outsiders, the individual public stockholders here who, I believe, numbered some 17,000 people.

Now, there is a difference in the type of disclosure that is required when a corporation is going to sell its stock and the kind of disclosure that is required when a corporation, let's say the insiders here, are going to buy stock.

When stock is being sold, I believe the whole experience and lesson of the Securities Act and the other federal laws that deal with the registration and sale of securities is that the corporate insiders must be cautious about disclosing the negative factors affecting the value of the stock they are about to sell. That is to make sure that if the stock goes down in price or something else happens, they can say, and truthfully say, we told you all the

negatives about this stock.

Now, when the insiders are buying stock, the situation is the reverse because here the insider is the buyer of the stock and he is required to make full and fair disclosure under the securities laws of the positive qualities of the securities and more particularly as it relates to Section 14-A of the Act. In the proxy statements, it is important and he is required to disclose all the factors relating to the intrinsic value of the security that the insider is buying from the outsider.

Here, as I said, the main instrument of disclosure was this proxy statement, dated May 21, 1971, which solicited the vote of the minority on the approval of this merger between Schenley and Glen Alden.

Glen Alden had sufficient voting power to determine the outcome of the vote, there is no question about that. Everybody concedes that but, nevertheless, the proxy statement had to be filed and had to be sent out because of the SEC regulations and the fact that these stocks were listed stocks, and under the Delaware law, you had to hold a meeting to approve the merger.

So I don't think there is any question here nor will there be an issue here that the issuance of this proxy statement was an instrumental factor in the seriesof events

that led to the consummation of this merger.

I have emphasized so far the Federal Securities Act aspects of the insiders here. I would like to pass quickly to what these insiders, what their duties were as fiduciaries in dealing with the minority stockholders.

First, it is clear beyond dispute, I believe, that a majority stockholder does have fiduciary obligation to the minority stockholders of the corporation.

Secondly, we are dealing here also with the directors of Schenley who put out this proxy statement, I must say, with a great deal of help from the Glen Alden people.

It is hard to distinguish where Schenley ends and Glen Alden begins because we had Mr. Becker, who was chairman of the board of Schenley, the number two man in Glen Alden, and we also had three directors on the Schenley board who were also Glen Alden directors.

In any event, I think it is clear that there is a fiduciary obligation here and in questions involving a merger or in a transaction between insiders and outsiders at common law, there is a clear and positive duty on the part of the fiduciaries to give full and fair value to the outsiders in dealing with the outsiders here in buying their stock.

And that is particularly true here where the

insiders stand to gain from any amounts by which they short-change the minority stockholders in buying their stock because the full value of any underpayment for this minority position would redound only to the benefit of Schenley which by that merger became 100 percent owned by Glen Alden.

I don't think there is any doubt here that in connection with the fiduciary obligations of defendants here, as Mr. Silverman, my worthy opponent going back for many, many years, had told the Court in Delaware, the defendants have a burden of proving here that this transaction was a fair one.

That duty certainly is one that exists at common law and I believe that it would exist as well here in making the kind of required disclosure that the law imposed on these people.

Your Honor, I think we deal here mainly with the question of fair value because it is the facts that bear on the fair value of this security which were required to be disclosed in this proxy statement and it is fair value that determines the manner and -- in which at common law, the insiders here deal with these outsiders.

I would like to say just this about fairness of value at this time:

I think the law wisely says that fair value is

not one figure. It is a range of value. I don't think it is ever possible to be very precise about what is fair value, and I would like to describe that range for analytical purposes here in the course of this testimony as being a range of figures between a permissible high value for this stock and an impermissible low value for this stock, and I believe it is within that range that your Honor, as the umpire here, is going to have to make some decisions about fair value as it relates to fair and full disclosure and as it relates to fairness in the dealings between these people at common law.

Now, we contend that the $29 per share that was paid for the common stock here is far less than impermissible -- is far less than an impermissible under law, and why do we think so?

First, I would like to say that when Glen Alden bought its 86 percent of the common stock of Schenley in 1968, I believe its average cost was $60 a share for that stock in 1968.

Second, Glen Alden has consistently taken the position in its financial statements that the value of its investment in the Schenley shares had not declined since acquisition and it was for that reason that the difference between what Schenley -- what Glen Alden paid for these

2 shares and what the book value of these shares was, the
3 Schenley shares had a book value of roughly $40 a share in
4 1968 and they were carried on the Glen Alden books at
5 roughly $58 to $68 value and that difference between forty
6 and sixty-eight was an intangible value which a company is
7 required to amortize if in its opinion, the value of the
8 investment has declined, that is, the value of the
9 investment to which that excess purchase cost applies.
10 So here we have a case where the Schenley
11 stockholders, common stockholders were given $29 for a share
12 by -- at a time when Glen Alden, at the end of 1970, carried
13 these shares on its books at $62.72 a share and said then
14 that the value of those shares had not declined since
15 acqusition.
16 Now, that opinion of Glen Alden was not
17 disclosed in the body of the proxy statement. It could only
18 be found some hundred pages later in the proxy statement
19 buried in a footnote in language which you would have to be
20 an expert, either accountant or analyst, to understand, but
21 that is what it said and I think, as proof will show, there
22 is no argument about that.
23 Now, without this knowledge, the outsiders here
24 were in an unfair bargaining position and our position here
25 is as to value that the $62.72 is the permissible high value

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2 for the Schenley common stock.

3 One of the important facts here concerning the

4 value of this stock is the tremendous amount of surplus

5 cash that was generated by Schenley between roughly March of

6 1968, when Glen Alden made its first investment in Schenley,

7 and May of 1971, immediately preceding the time of the

8 merger.

9 Surplus cash is an important and independent

10 ingredient of value in fixing the value of a stock or a fair

11 value of a stock.

12 Here, I believe there will be -- the proof will

13 be clear that there was at least $150 million cash and

14 marketable securities of some $191 million that Schenley had

15 on May 31st, on the eve of this merger.

16 And it is our position that at least 150 of that

17 191 million of marketable securities and cash was surplus

18 cash, that is, cash that was not necessary to operate the

19 business of Schenley and, indeed, as our proof will show,

20 there were many years in the past history of Schenley when

21 it did business with about $20 million in cash.

22 I won't go into very much as to what brought on

23 this tremendous increment of cash. I think our trial

24 memorandums deal at length with it between producing excess

25 inventory, accounts receivable, merging Schenley with

Buckingham which brought up $32 million in cash, and the sale of Buckingham, itself, on May 10, 1971 for some $120 million, brought on this tremendous amount of cash.

I don't think there is any dispute between us as to how much cash and marketable securities Schenley had in May of 1971.

I think where the argument will come in, at least one area of argument, is going to be how much of the $191 million was surplus cash, that is to say, how much of that cash was not necessary for the profitable operation of Schenley's business.

I believe that if there is one area where insider's judgment and insider's knowledge is far superior and far more accurate, it is in the area of how much cash a company needs to run its business.

Here we are going to be able to show, I believe to your satisfaction, that what we claim was surplus cash in the amount of $150 million was not in any way a theoretical estimate by some long-haired person or an analyst on what was the amount of the excess cash. The important thing to remember about the amount of this surplus cash is that it was not disclosed in the proxy statements.

On the common law side of liability here, the plaintiff will show that defendants did not consider that the

amount of surplus cash or the existence of surplus cash in determining the fair value of these shares for purposes of merger.

Now, in addition, we will show that these corporate insiders had information about Schenley's past and expected earnings, a number of non-recurring expenses and other factors that would increase the current and expected earnings of Schenley that were not revealed in the proxy statement or in any other document, and it is those same factors that were ignored by the fiduciaries in fixing the fair value of the shares.

I said before that it is our contention that $29 was an impermissible low value for this stock, that somewhere in the area of $62 was a permissible high value in the range of fair value for this stock.

The experts that we will put on the stand will show that there can't be any argument in terms of conservative methods of appraisal recognized by a number of the existing authorities that have to do in this area of mergers and acquisitions.

We will show that the impermissible low here was $48 per share for the common stock and 10 percent less for the preferred stock based on that same convertible factor I mentioned before.

I would like to touch lightly and quickly on the measure of damages and tell your Honor that it is our position that under the federal law and under the common law, the measure of damages is essentially the same. It is the extent to which the fair value of the shares exceeded the consideration that was received for those shares.

To summarize quickly, your Honor, it is plaintiffs' contentions that there was no appropriate disclosure made in this proxy statement that related to the value of these shares. There were no negotiations otherwise and there was no fairness in fixing the value of the shares.

With your Honor's permission, that completes my opening statement, so-called, and we would like to call Mr. Riklis, the number one man here, as our first witness.

THE COURT: Mr. Silverman is arising. I think he wants to make an observation, too.

MR. SILVERMAN: If your Honor please, I would prefer to do it in the way of a short opening.

THE COURT: Please do.

MR. SILVERMAN: Your Honor, I am sure without objection from Mr. Odell, and I do not know whether you have before you the proxy that we are talking about, and with Mr. Odell's consent, perhaps I can hand up to your Honor a

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2 document I am confident Mr. Odell is going to put in

3 evidence during the course of this case.

4 MR. ODELL: Be my guest.

5 MR. SILVERMAN: Now, if your Honor please, I am

6 struck by Mr. Odell's opening and I do not intend to make

7 this a debate between us, but I do think that some

8 observations and an attempt to put this case in the context

9 of a litigation rather than a kind of a free-for-all

10 discussion might be helpful.

11 If I trespass on your Honor's time or patience,

12 signal and it will make me withdraw very promptly.

13 The case involves the merger of Schenley and

14 Glen Alden.

15 In 1968, Schenley acquired 88 percent -- forgive

16 me, Glen Alden acquired 88 percent of Schenley, first by a

17 purchase from Mr. Rosenstiel, the then head of Schenley,

18 for cash which was $53, making allowances for the issuance

19 of new stock, and a tender offer to every other shareholder

20 of Schenley for $53 in cash or securities, but that was the

21 value of that package, and everybody had that offered to him.

22 Now, as a result of that purchase and tender

23 offer, Glen Alden became the owner of 88 percent of

24 Schenley. In 1971, Glen Alden determined to merge with

25 Schenley.

Now, there is no question about the control. 88 percent of a minority of a company is control. The cash and securities that Glen Alden offered to the Schenley minority shareholders was worth $29. My friend concedes it, it is not an issue in this case.

My friend points out, and I think with absolute justification, Glen Alden had the votes to put this merger through. The only issue is whether there was sufficient disclosure in the document that has been handed to your Honor, which was sufficient to permit the Schenley minority shareholders not to vote against the merger, that's an irrelevance, but were they on sufficient notice that they had appraisal rights and were they in a sense cheated out of, flim-flammed out of their appraisal rights.

This has been a much litigated merger. There were three injunction motions made before the merger, the first before Judge Lasker of this court on behalf of certain of the plaintiffs that Mr. Odell represents.

Judge Lasker denied the injunction with an opinion and we will hand that opinion to your Honor, although -- for the convenience of your Honor's law secretaries.

A motion for reargument was made before Judge Lasker. He denied the motion for reargument and he wrote an opinion, which I suggest bears on the issues in this case.

An injunction motion was brought on behalf of one David Green in Delaware and his counsel with Pomerantz, Levy & Haudek, and there in Delaware, quite properly, they raised the issue of fairness in the state court. The issue, as I say, was unfairness in that case.

Chancellor Marvel denied the injunction in a lengthy opinion, which we will also furnish your Honor with, and Mr. Odell observed in that argument I conceded that in the state court where the issue is unfairness and where there is control, we had the obligation of showing fairness, and Judge Marvel held that we had discharged that burden in this merger.

A third application, all before the merger, all with this proxy statement before them, was made to Judge Sugarman of this court by Mr. Odell. That motion was denied by Judge Sugarman without opinion.

A fourth proceeding that arises out of this merger is the appraisal under the Delaware statutes. People are entitled to an appraisal in this merger proclaimed in the proxy statement, beyond question.

People took advantage of that legal right that they had and we had a trial under the curious rules of the Delaware Court about what constitutes unfairness under their peculiar notions of fairness.

1 lzesb

2 I concede to your Honor that before the
3 appraiser, I lost that case. It was a disaster. We then
4 went to Chancellor Marvel who had appointed the appraiser,
5 and he reversed and he held that fairness even under their
6 statutes was $33 or something with a complicated formula.
7 That proceeding is now on appeal by my adversaries to the
8 Supreme Court of Delaware.

9 We are now before another court, your Honor, for
10 a fifth time in connection with this selfsame merger. Let's
11 understand what we are here trying because Mr. Odell slides
12 in and out of that.

13 This is not a fairness case. That case belongs
14 across the street. It is not the breach of a fiduciary
15 relation case. That case belongs across the street. It is
16 not an appraisal case. That case belongs in Delaware.

17 This case alleges violations of the Securities
18 Act and it is a disclosure case and it revolves essentially
19 about the document that I have handed to your Honor.

20 Now, a look at that document, and I mean the
21 whole document, not sentence 3 on page 46, I am talking about
22 the whole document, that document as a whole is not a selling
23 document. That document was not calculated to say to the
24 minority shareholders, give us your stock.

25 It was a warning document. It is a warning

document that I think probably -- I will be guilty of hyperbole -- probably is as fulsome in its warnings as any document of its kind that I have ever seen.

The first page of the document in big block letters says -- read it carefully -- Glen Alden controls Schenley. Glen Alden has the votes to put this through. Schenley's board is not independent. You ought to consider this in the light of the lack of independence, all in the first paragraph.

Second paragraph -- and this I consider to be, and I will come to this several times -- it should also be noted that in connection with the reorganization Schenley will transfer to Glen Alden substantial funds of Schenley including a substantial part of the proceeds received by Schenley from the recent sale of its subsidiary, the Buckingham Corporation.

The next paragraph, all in block letters, there are several litigations pending which are described in a separate section, not at page 962, but on page 8, and it runs for three or four pages.

It sets forth every litigation in connection with this very document, with this very merger, and it sets forth every contention, including the contention that the stock is worth $54 and $64 and $80, and there are people who are

1 lzesb

2 urging this on everybody and we say, in light of that, look

3 to your appraisal rights, gentlemen.

4 Now, that is on the first page of the document.

5 I suggest, if your Honor please, that in connection with the

6 litigation section alone, if one takes Judge Friendly's

7 decision in the Northeast case where he said -- and it is a

8 decision that has been adopted by other judges in this

9 court -- where he says that where the stockholders had been

10 sufficiently alerted to one of the party's active interest

11 in promoting the merger and the charges that had been made

12 against it in the stockholders' suits, it was for each of

13 them to then determine whether or not he wanted appraisal or

14 not and that should dispose of it on that section alone, if

15 we had nothing else in this proxy statement.

16 However, that really is not the thrust of my

17 contention. It is a throwaway, albeit, in a sense,

18 dispositive.

19 Let me ask your Honor to note one other preliminary

20 matter. The pretrial order sets forth the undisputed facts

21 in this case. There are relatively few disputed facts.

22 The only issue I think of substance between us is,

23 did you have adjectives in the proxy statement, did you come

24 to conclusions in the proxy statement. Not that the facts

25 aren't there because the facts are there and I believe your

Honor will find that they are stipulated.

Every aspect of this merger was disclosed. There is no doubt about the Buckingham sale. The Buckingham sale, just because there may be some confusion when your Honor looks at the financials, the Buckingham sale is not reflected in the Schenley financials, audited as of December 30, 1970, because it did not take place until 1971, but it took place between the audited financials -- between December 30th and the time the proxy statement went out.

The sale was disclosed. We put in pro forma statements which were on the assumption that Buckingham had been sold in 1970 and what the effects would be had it been sold in 1970.

There is quite clearly a disclosure of Buckingham and the effect of Buckingham on the financial picture of Schenley,ex-Buckingham.

Now, what is my friend's major claim, that the proxy fails to disclose adequately the amount and the source of funds that was going from Schenley to Glen Alden in connection with the merger.

Schenley was a cash-rich company,no doubt about it. The financials show it. The audited balance sheet -- I won't point to it, I will, perhaps, in a post trial brief, if your Honor wants it, the specific places in the proxy

statement where the cash position of Schenley is laid out.

The cash position in the financials is not -- does not contain Buckingham but we have special schedules to reflect that.

How does my friend make a disclosure case, therefore, out of what I contend is more than adequately disclosed? He says that you should have told everybody that this cash was excess, or he used another euphemism for excess, redundant or surplus -- surplus.

Now, it is hard for me to understand what excess or surplus means in the context of a multimillion dollar business.

Doesn't it depend on your plans, your debt obligations? Is it surplus if you owe more? Shouldn't you pay off your banks maybe? Changes in the economy that may dictate what you want to use your cash for? Inflation? Intention to expand your present lines? Intention to go into new lines of activity? A whole host of business decisions that will determine what you do with cash, not that the cash is excess but what is it that you do with it.

My friend seems to want to say that surplus cash means money that should have been distributed to stockholders. Maybe he knows of some companies, I don't, where they have sold a portion of their assets and continued

in business, or which seems to be more current in this climate, where some of their assets are confiscated by a foreign government, although all of their other assets are in business and they get cash for it.

I have never heard of anybody saying, that's money that should be distributed to stockholders. It is money to be used in the course of business. To label it excess, surplus, redundant is nonsensical if you show the quantum and the quantum is shown.

There is no doubt that Schenley sold Buckingham for $120 million. That meant -- and you don't have to be a financial genius for this -- that Schenley had $120 million of cash that it never had before.

It had Buckingham before, it had earnings before, it had whatever Buckingham had. It did not have cash. The extent to which it had $120 million, that had not been used as cash in their business before, but to put that statement, which is a truism, which is self-evident, in a proxy statement, it boggles the mind to think that that's the kind of disclosure one has to make.

Now, my friend goes further. What is it that he -- if you read his pretrial order, that the source of Schenley's cash must be set forth, and he says it wasn't set forth, for four years we have been mucking about in this

case with my friend's attempt to establish an elaborate and undisclosed plan which has lasted for five years to liquidate $200 million of Schenley's inventory and accounts receivable.

He has tried to establish the plan and he says in his pretrial order, and he seemed to suggest here, that that was successful, it generated a lot of cash which we did not tell people about.

He cites various estimates that were made in 1967 and in 1968. One estimate was 180 million could be reduced to cash from inventory and accounts receivable. Another was 135 million, and I will deal with that in a moment, or perhaps right now.

Richard Graham, your Honor will hear about Mr. Graham through Mr. Odell and he may even get some of Mr. Graham's product into evidence,I don't know. But if he does, it will show that Mr. Graham was an assistant to Mr. Riklis.

He made a report to Mr. Riklis in 1967, he used Schenley's financial statements at the end of 1966 for this analysis. He said that Schenley -- he estimated and he says this in a section labeled, "Pure Opinion."

He estimates in that section that inventories could be reduced from $300 million to $150 million and that accounts receivable could be reduced from 94 million to

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2 64 million.

3 Now, what are the facts? Inventory, as of May --

4 the date of this merger, inventory was not reduced by

5 $150 million. It was reduced by $6 million. He was

6 $144 million off the mark.

7 Accounts receivable were not reduced by $30 million,

8 they were increased by $20 million. He was a further

9 $50 million off the mark. The sum of those miscalculations

10 is $194 million.

11 Is that the successful plan that we should have

12 disclosed, he says, back in 1968? And I venture to think had

13 it been done that way, we would [illegible] be in the dock. He

14 cites to Mr. Greenberg, and he says he is going to have Mr.

15 Greenberg here and maybe Mr. Greenberg's material will come

16 into evidence.

17 Mr. Greenberg was an expert, he was a partner of

18 Bear, Stearns, an investment banking house. Mr. Greenberg

19 was retained by Glen Alden when Glen Alden had purchased

20 Mr. Rosenstiel's stock for $53 in cash back in 1968.

21 Stockholders sued Glen Alden and said that was an improvident

22 use of Glen Alden's money and they were attacking the

23 directors for having abused their fiduciary roles and

24 whatever.

25 In defense of that action and in order to justify

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2 the business judgment of the Glen Alden board, Mr.
3 Greenberg put in an affidavit in which -- and my friend
4 calls it an opinion as though it had something to do with
5 this merger or any other merger. It was an affidavit in a
6 litigation.

7 In that affidavit, he said he now used August 31,
8 1967 figures. Graham used 1966 figures based on his
9 projections, analysis, or whatever. He says $120 million is
10 to be cut off inventory, reduced to cash, and the fact is
11 that by May 1971, $15 million -- using his figures, not 120
12 but 15, so he is $105 million off.

13 He says that with respect to receivables, there
14 should be a decrease of $20 million. In fact, there was a
15 decrease of 9.3 so he was off a further 10.7.

16 Should we have disclosed that? Is that
17 disclosable without running the risk of going to jail?
18 Projections are frowned on. Hopes, estimates, plans are not
19 disclosable for the very reason that, as here, they
20 sometimes prove to be overly optimistic.

21 Now, where did the cash come from? Where did the
22 liquid assets come from because Schenley did have great
23 amounts of cash.

24 First, there is a statement in the proxy
25 statement of consolidated changes in working capital which

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2 show year-to-year-to-year-to-year how all of these figures
3 change. The source of it all, there is no question, are
4 three sources:

5 One, the sale of Buckingham, $120 million which
6 was $114 Million, really.

7 Two, $32 million of Buckingham's money which had
8 gone into Schenley in 1969 at the time of that merger.

9 Three, a $39 million increase in earnings, which
10 nobody talks about. Schenley increased its retained
11 earnings by 39 million. That's cash.

12 And, four, and I say very least, was a twenty to
13 thirty million dollar reduction in inventory and accounts
14 receivable over the period.

15 Is there a disclosure in the proxy statement as
16 to the cash going up and the source of it? I submit, yes,
17 and I submit my friend cannot prove no.

18 Let's talk about whether there is a disclosure
19 about the cash going up. I read to your Honor from page 1.
20 On page 3, there is a statement in the proxy statement which
21 appears under, "Certain Aspects of the Proposed
22 Reorganization."

23 Paragraph 2, "The proposed reorganization will
24 result in Glen Alden becoming the owner of all of the equity
25 securities of Schenley except the Schenley preference stock

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2 and will permit Glen Alden to transfer funds from Schenley
3 to itself, including a substantial portion of the proceeds
4 of the recent sale of Schenley's subsidiary, the
5 Buckingham Corporation, subject only to applicable
6 restrictions in Schenley's various loan agreements."
7 That may be read to mean we have the right to
8 take every nickel. In fact, we did not. And later on in
9 the paragraph, you will see that subject to the consummation
10 of the proposed reorganization and the said loan agreement
11 restrictions, substantial funds of Schenley will be
12 transferred to Glen Alden. These funds will initially be
13 added to Glen Alden's general working capital and will
14 provide a source for repayment of current maturities of
15 Glen Alden's long term debt.
16 How much clearer can it be? But if it has to be
17 clearer, on page 43 of the proxy statement, it said again,
18 and if it had to be clearer than that, in Exhibit A of the
19 proxy statement, the agreement of merger, it is provided
20 that Glen Alden will purchase the Schenley -- that Schenley
21 will purchase the Glen Alden debentures to go to the
22 shareholders, and that means transfer cash up. How much cash
23 was to go up?
24 Now, my friend says that could be read to mean
25 all. In fact, $80 million of cash was necessary to buy the

debentures which were to go out to the Schenley shareholders. $80 million went up to Glen Alden originally but $20 million immediately came down, back, because people opted to take their appraisal rights.

During the next four or five years, some portion of that twenty went back up. How do you know precisely how much money is to go up? Isn't it sufficient to say substantial amounts are going up. Is this now to be a game in how you write proxy statements?

Do you impose what my friend thinks is $150 million liability because of this kind of flim-flammery in a proxy statement, your inability to articulate in words that one reader thinks ought to be present? That cannot be the basis for liability.

Now, if there is any question as to what that proxy statement means, any question, let me say that it has been interpreted, it has been read and it has been articulated, and it was articulated by Mr. Glick.

Mr. Glick is an officer of David J. Green. He appeared in the Delaware court with the proxy statement and he said there, "Thus, the merger proxy material proclaims that Schenley will transfer to Glen Alden substantial funds," and he cites the language that I have just read.

And he proclaims again the language on page 3 and

he then comes to his own conclusion, which is new because he is a man who reads a proxy statement and he derives conclusions from it and he said:

"The total amount thus being upstreamed would, in my opinion, be virtually all of Schenley's surplus cash, $155 million."

If there was deception here, it was that we seemed to say more was going up than went. That can't be my friend's claim. So that Mr.Goldstein, another person who appeared in the Delaware court, submitted an affidavit under the title, "Surplus Cash."

He says at December 31, 1970, the financial condition of Schenley was strong and liquid with a large amount of cash surplus to the needs of the on-going business, and he estimates that to be $155 million.

Mr. Levy, a partner of Mr. Pomerantz -- he is great because what he says is, "On the other hand, Glen Alden is going to take unto itself 100 percent of this operating business and, most important, 100 percent of its surplus cash."

He goes on, that surplus cash is largely ignored in the affidavits of my friend's experts but that surplus cash is $155 million.

In the proxy material -- this is disclosure

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2 here -- Glen Alden understands, fortunately, the compulsions

3 of a higher order than David J. Green, and the Schenley

4 minority stockholders has had to say just what they intend

5 to do with that money, and they say -- I am now at page 1

6 of the proxy material, your Honor, the second full paragraph

7 in black type -- they say, and he quotes them.

8 And now he goes on, he says -- if you will jump to

9 page 3 -- a little more flesh is added to those bones, and

10 he quotes it.

11 That is the disclosure that we say has been made.

12 But if there is any question as to what this means, let me

13 quote from my friend, who appeared before Judge Sugarman and

14 said, I think most intelligently than persuasively, the

15 reason why the can't be unscrambled, the merger, is very

16 simple, your Honor, and it is found on the front part of

17 this proxy statement, and I will give you the page in just a

18 minute.

19 If this merger is consummated and it can be

20 consummated on the day of this meeting, Schenley is now

21 sitting with some $200 million in cash which they realized

22 from the sale of assets not too long ago, the Buckingham

23 subsidiary. They owned, I think, one of the well-known

24 brands of Scotch.

25 But at page 3 of this proxy statement, under

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2 "Certain Significant Aspects of the Proposed Reorganization,"
3 he reads it, and then he reads from page -- he reads from
4 page 3 and it is in parody.

5 There is no question that there was no failure
6 to disclose or that anybody was misled. Indeed, if
7 misleading there was, it goes the other way. Now I've
8 argued that at length and I will not argue the other things
9 because I consider that to be central to my friend's case.

10 He states that the financial statements of
11 Schenley underestimated Schenley's income in the proxy
12 statements. He says there is an attack in our financial
13 statements in the proxy statements and if you read page 50
14 and 51 of the pretrial order, where he is making his
15 contentions -- and I assume he is for real about that -- he
16 says that we in the pro forma, not in the financial
17 statements, but in the pro forma, we said that there would
18 be a tax payable on the gain from the sale of Buckingham,
19 for we were reserving $13 million for that tax.

20

21

22

23

24

25

2 And that is as of the end of 1970. And he says,
3 "Well, that's a phony, because you knew at the end of 1970
4 that you weren't going to pay $13 million in taxes. You
5 knew you were only going to pay $4 million in taxes."
6 Therefore, that pro forma is wrong by $9 million.
7 If you look at page 3 of the proxy statement,
8 your Honor, where there is a pro forma instead of showing,
9 assuming he's right, which I suggest is nonsense, instead
10 of showing $162 million on page 3, he would have had to
11 show $171 million on page 3 of cash. I cannot consider
12 in the magnitude of these figures that these are material
13 but more importantly than being immaterial, he is just
14 dead wrong. Where does he get the notion that we knew in
15 1970 about these writeoffs, that we did take used barrels.
16 He knew, we were going to bring them down. We knew in
17 '70 we were going to write them down in '71.
18 Now that's errant nonsense. If we knew in '70,
19 we had to write them down in '70. You don't write down
20 at your pleasure. So if we knew in '70 and if we wrote
21 them down in '70, the financial statements were not under-
22 stated, they were overstated.
23 He can't be for real about that. He says that
24 we should have taken a writeoff for certain reinstallation
25 costs that we knew we were going to take. If we knew we

should have taken them and if we took them, then the financial statements were indeed wrong but not in the way that he would have us believe that they were wrong. Indeed it cuts across his argument.

So much for the financial statements on that aspect of it. He has another aspect. He says we should have taken other writeoffs in earlier years and because we didn't take them in some way the financial statement were phony. Two things he points to. In '69 he says we should have taken $2 million in writeoffs; that is, we should have increased the cost of goods sold in those years by $2 million, and in 1970 we should have increased it, he says, by $4 million, but even by his theory it should have been 3 million. But whatever the figure, the figures he would have us increase, are the cost of goods sold.

In 1969, the cost of goods sold were $504 million. He would have us make that $502 million. In 1970, they were $525 million. He would have us make it $521 million. If this is the kind of nit-picking--and incidentally, he's wrong as an accounting matter, and the accountants will show that--if that's the kind of nit-picking we are in in this case, heaven save the buck. He now has an argument, and I dwell on this, if your Honor please, but if this evidence comes in, it may be seen in some context,

he now has an argument going back to the pro formas, he says on page 43 of the proxy statement where you had a pro forma as to how the Buckingham would be used assuming it would have been sold the year before it was sold.

And we state that that made an assumption which is stated that we were going to pay off certain short term debts with some of this money, and what the effect would have been if we paid it off, the interest charges would have been different.

He says, "When you say in your proxy statement the following language which is: That one of the assumption in the balance sheet is in the sale of Buckingham"--no, I'm sorry. The language he refers to refers that this is not a representation that we are going to use this money for this purpose. In other words, we are just doing this to show you what would happen if we used the money for that purpose. It is not a representation that we say we are going to do it. He says when you say it is not a representation that you are going to do it, you are being deceptive. Because you had already formed the intention not to use the money for that purpose.

Now, I don't know what you do about it. One, it is an accounting device to show what would happen if you say that is not what you intend to do, and he says when

1 jpjb 4

2 you say that that is not what you intend to do, you are
3 deceiving everybody because really what you are making them
4 believe that that is what you intend to do. If I am being
5 inarticulate about that, it is because I suggest that the
6 theory is so weird.

7 He now comes to a next point. There is a foot-
8 note to the financial that he pointed to. In that foot-
9 note, which existed long before Schenley was acquired by--
10 in this merger, long before any Schenley shares were ever
11 acquired. It is a traditional footnote of Glen Alden that
12 has been commented on by the accounting profession as
13 being an example of the way to do it. That footnote deals
14 with the treatment of intangibles. In a nutshell, if you
15 buy something that has a cost on the books of the person
16 from whom you buy it of $10, and you pay $20 for it, be-
17 cause you have to pay 20 for it, but on the books it is
18 worth 10. The excess 10, it is counted as an intangible.
19 Under the accounting rules, when do you write that intan-
20 gible off or down? You do it when an event has taken place
21 that permanently impairs the value of the underlying
22 business so that if you buy Schenley for blank dollars,
23 and you pay that amount but on the books of Schenley they
24 are worth--it is carried at so much less, you don't write
25 off the intangible unless Schenley's plans are destroyed

in an earthquake.

If the business of Schenley, not the value of Schenley's stock, if the business of Schenley is substantially impaired, you then have to write off your intangible.

B2 That's the footnote that he says has some relationship to the value of a share of Schenley stock, and you'll just have to hear the accountants on that subject.

Now the other parts of his contentions are, one, that the opinion that Allen & Company gave as to the fairness of the merger was a false opinion. I don't know what he wants from us about that. He will have Allen in and let him fight about that. But that's not our problem. In fact, I do not consider that there is anything wrong with that opinion, but he would make something of it.

He then says that we didn't put into the proxy statement the value of Glen Alden sixes, the market value of Glen Alden sixes. Glen Alden's 7-1/2 were given in this merger. They differed from the Glen Alden sixes. You couldn't put it into a proxy statement. You can't put in the value of other securities or the market value or the market price of other securities because that would look like cowding. What is it relevant to? It is relevant only to the $29 package. It could only be relevant

1 jpjb 6

2 to, say, that the 7-1/2 securities weren't worth what we

3 said they were worth. But that is not what he is contest-

4 ing. He said the package was worth 29. It is an irrele-

5 vancy to this lawsuit.

6 He then goes on to say that the proxy statement

7 doesn't say that terms were set. In fact, that was not

8 the only fact, but in any event, what we would have us

9 do, is to psychoznalyze the views of every director on that

10 board and proclaim what went through his mind in setting

11 the merger terms, and that cannot be required. The fact

12 is, that they set the merger terms, they said it was a con-

13 trolsituation and every single aspect of the business and

14 affairs of these companies was laid bare. What further

15 disclosure would he want? He has 10V5 claims which are

16 the same as his 14-A claims except that he says.

17 There is only one other thought that I will close

18 with and I make mention of it because, well, your Honor,

19 will see. Odell poses a plan. Going back to '68 or

20 August of '68 whereby we evil men were going to force the

21 Schenley minority shareholders into an unfair merger in

22 1971, and as the first step in that nefarious activity

23 because we're going to take them out in 1971, the first

24 step was we offered them all $53 in 1968.

25 Now, if your Honor has trouble following that, I

jpjb 7

have trouble following it. We offered them $53, I take it that they should not take the $53. They could have taken it and gotten out, but there was some plan that we had to keep them in.

How did we do that? He says we didn't show Schenley was such a great company. We didn't tout Schenley. We understated income or whatever. But the effect of not touting Schenley was to make people take $53. Had we touted Schenley and offered 53 and these people laid back and said, it is worth more than 53, and we're not going to take the 53, there might be some logical sense to that. But he says, you showed Schenley was a lousy company at 53. It wasn't a good company, thereby forcing them to take 53 as a first step in offering them 29 in 1971.

I have trouble with the logic of that and I will say no more on that subject.

But now to revert back to what I consider to be, and this is my last point, a most important one. This case as I see it, is a Securities Act case. It deals with disclosures. It deals with whether there has been material omissions. That's the stuff of 10V5 and 14A. It is not fairness. It isn't whether Schenley had brands or whatever. That isn't this case. That is the one he should try somewhere else.

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And, if your Honor please, in the course of these proceedings we are going to preserve for the defendants our right to make sure that this case, which is in the Federal Court, because it presumed presumptively from the complaint alleges violations of the Securities Act, deals with violations of the Securities Act and not an appraisal of a case which I just finished litigating in Delaware, or fairness or breach of fiduciary relations or anything else. We are going to try to have this case stay on the straight and narrow in which case I do not consider that this will be as lengthy a proceeding as my friend would think.

THE COURT: All right, Mr. Levin.

MR. LEVIN: Abraham G. Levin. I appear for the defendants Meshulam Riklis and Rapid-American Corporation. I shall be very brief, your Honor.

We have been summoned to this Federal District Court today to respond to plaintiffs' claims. Purported Federal claims based upon alleged violations of Section 14A and 10V5 of the Securities Exchange Act of 1934.

Mr. Silverman has spoken at great length with respect to the lack of merit in the plaintiffs' contention that there was a lack of adequate disclosure in the proxy material that was instrumental in the effectuation

of the merger which is here being attacked. I wish to address myself not to the lack of substantive merit in plaintiffs' contentions but rather to the nature of the claims and with the utmost respect to the discipline to be imposed by means of evidentiary rulings upon these proceedings by a proper understanding as we see it of the issues actually raised by this trial and for this trial.

I submit that the issues properly presented to this Court for adjudication do not include the question whether the merger of Schenley and Glen Alden was accomplished upon unfair terms. This so-called fairness question, although quite obviously central to Mr. Odell's thinking, is simply not before this Court in any shape, manner or form.

I submit that evidence relating only to the issue of fairness is properly excludable. Indeed we respectfully submit, must be excluded as irrelevant. I reach this conclusion, not by any circuitous route, by any obscure reasoning or by hyper-technical legal analysis. As this Court is well aware, the essential nature the very gravement of the securities law is the adequacy of disclosure. The basic teaching of the ircuit Court of Appeals, in Popkin against Bishop is that judgment in an action arising from Section 10V or 14A, of the Securities Exchange Act

turns not upon the fairness of the challenging corporate action or the wisdom of the corporation action, but rather solely upon the adequacy of this disclosure made.

I might add that Popkin versus Bishop is my case, and I am painfully aware of the impact of that ruling.

Accordingly, it is my understanding that we are before this Court today to try a non-disclosure case. Not to participate in a judicial review of the fairness or wisdom of a corporate transaction or in an appraisal procedure which has already been had. This is a non-disclosure case.

B3 I hold this as strict understanding of our purpose in being here notwithstanding the plaintiffs' purported invocation of the common law claim under the doctrine --under the doctrine pendant jurisdiction. We submit under the present posture of this proceeding there simply does not exist a cause of action under any law, State or Federal, statutory or common, for alleged unfairness in a consummated merger transaction. We do not dispute that a proven claim of unfairness amounting to fraud or overreaching is a proper ground upon which to prevent the consummation of a corporate transaction at the preliminary injunction stage. And that is precisely what happened here, your Honor. The proxy material presented, the shareholders of

Schenley with one of so enraged by the offer that they had the right to go to a Court and seek an injunction, or they were to go the route of the appraisal.

All these were available to every shareholder of Schenley. Indeed, in this case, where the merger transaction which granted appraisal rights to dissenting minority shareholders was challenged more than once prior to consummation as unfair and improper and was found to be, it was found to have met those tests, where the merger could go forward without the intervention of the Courts.

Our position, therefore, is, it is the adequacy of the information upon which the class here represented was to make the judgment to exercise or not to exercise its appraisal remedy which is the only liability issue to be tried in this case. Did we adequately advise the shareholders of Schenley of all of the elements of this merger, did we meet all of the requirements of disclosure with respect to Schenley and with respect to Glen Alden and with respect to the items that we purported to make representations with respect to our proxy material? We were alerted whether we alerted them sufficiently so they could make as reasonable men an adequate judgment as to whether or not they were to go the appraisal route, accept the

offer or go to the Courts and challenge the merger as being unfair.

Plaintiffs purported common law and fairness claim is legally defective both on the merits and jurisdiction only. Plaintiffs' unfairness claim lacks substantive claim because there is no such claim. Plaintiffs' unfairness claim even if such cause of action were to be created, would be beyond the reach of even this Court's pendant jurisdiction, as the issues do not arise out of the same core of facts in which the Federal Courts have held in non-disclosure cases. The fairness case is an evaluation case and appraisal is the only appropriate remedy, and that remedy has been pursued.

The trial of the Federal securities action has an internal logic and the necessary evidentiary discipline. Simply stated, again, the question is whether the proxy statement in the merger of Schenley and Glen Alden made adequate disclosure. We submit that the proxy statement satisfies all disclosure requirements in all respects.

Plaintiffs' claim of non-disclosure not only lacks merit, but those claims themselves were disclosed in the litigation section of the proxy statement. We submit, and shall demonstrate, that plaintiffs will not be able to establish any non-disclosure of any kind.

If your Honor finds that we are correct in this regard, then there is no occasion for this exercise of any further Federal jurisdiction. There is simply no further cause of action for plaintiffs to pursue in this litigation.

THE COURT: Mr. Levin, this is a situation where you gentlemen of course all are full to the top of your heads with the law and the facts and the history and so on. I'm groping my way into it. Do I understand you to say that if a judge of this Court denies a preliminary injunction because in his judgment the tests have not been met on the issues, which touches upon the stopping of the merger, that's the end of any questions as to the merger itself?

MR. LEVIN: Yes, sir.

THE COURT: You are saying this is a matter of law?

MR. LEVIN: I am saying that there is no case that we can find in which a consummated merger has been set aside upon the ground of unfairness and that in this case, the route that is preserved by law is the appraisal route and under current Delaware law as I understand it, it would be the only route available. And that the opportunity that the plaintiff has is at the very outset

demonstrate that the merger by its terms is so unfair and so over-reaching or otherwise fraudulent that it requires the intervention of the Court. Barring that, appraisal route is the only route.

THE COURT: What you are saying, if the Court gets a crack at setting aside, enjoining it beforehand because it is so flagrantly bad?

MR. LEVIN: Yes.

THE COURT: If the Court fails to do that, the logic of it is that it is within certain limits that it may require an adjudgment, but that adjudgment comes from an appraisal but not upon a later attack of the merger.

MR. LEVIN: That is substantially correct. I believe that the role of the Court in the first instance is not to intervene in the business judgment exercised.

THE COURT: Unless they are way off base.

MR. LEVIN: Or in this case as we constitute admittedly the majority of the board. It was our burden to establish that there was not such over-reaching as to warrant any inference of wrongdoing and thereby inviting intervention of the Court.

THE COURT: All right, thank you.

MR. MANNNING: I'll waive an opening statement.

THE COURT: Anyone else want to be heard?

MR. SEASONWEIN: No, your Honor.

THE COURT: We will take a brief recess.

(Recess taken.)

THE COURT: Mr. Odell, proceed.

MR. ODELL: Your Honor, we would like to call Mr. Riklis as our first witness. I would like to introduce Mr. John Zulack, who is associated with me in this case and who will question Mr. Riklis.

M E S H U L A M R I K L I S, called as a witness, after having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. ZULACK:

Q Mr. Riklis, would you tell us what position you had with Rapid-American in 1971?

A Chairman of the board and chief executive officer.

Q Were you also a director of the company?

A Yes.

Q And what position did you hold with Glen Alden in 1971?

A I was chairman of the board and chief executive officer.

Q What position did you hold with Schenley in that

year?

A I had no position.

Q Were you director of Glen Alden?

A I was.

B4 Q Mr. Riklis, I would like to diagram the relationships between the various corporations beginning in 1968 just so we can get them straight in our minds.

Now, was Rapid the top corporation in 1968, among corporations we're concerned with, Buckingham, Schenley, Glen Alden and Rapid?

A Yes, the parent corporation.

Q And would it be fair to say that Glen Alden was under Rapid-American?

A Yes, Rapid-American owned the 88 per cent of the common stock of Glen Alden.

Q Now, just so we can get this straight, at that time in 1968 didn't Rapid own McCory, and McCory controled Glen Alden, this is in 1968?

A It is quite possible.

Q And then at that time Glen Alden owned 88 per cent of the common stock of Schenley, correct?

A Yes, correct.

Q And Schenley owned--I'm going to used Buckingham, I'll write it out. Schenley owned 47 per cent of the common

stock of Buckingham?

A I thought it was 52 per cent.

Q Excuse me, you are absolutely correct. Schenley owned approximately 52 per cent of the common stock of Buckingham and the public owned approximately 47 of the common stock of the Buckingham in 1968, is that correct?

A Yes, I believe so.

Q Now, in 1969, what happened between Buckingham and Schenley?

A Well, I can't exactly give it back on the dates. I mean, you can help me, but Schenley did merge with Buckingham Corporation.

Q And these 47 per cent shareholders became $1.40 preferred shareholders of Schenley?

A Convertible to common stock.

Q So, now we have Buckingham owned 100 per cent by Schenley?

A That's correct.

Q And just for background information, in 1969, was there a transaction among these three corporations whereby Glen Alden, Rapid controlled directly Glen Alden, bypassing McCory?

A That is correct. To the best of my memory Rapid owned approximately 62 per cent of McCory as you

describe in 1968, and McCory or Rapid offered to purchase Glen Alden. Rapid ended up with a larger percentage of Glen Alden that was previously owned by McCory.

Q Does 63 per cent sound about right?

A It sounds about right.

Q We can check that. Now, in 1971, what happened between Glen Alden and Schenley?

A 1971 Glen Alden and Schenley merged.

Q Let me go back one step. This is the 12 per cent, this is the 12 per cent of the common stock owned by the public prior to the merger. And this was a convertible preferred?

A Right.

Q Right?

A Correct.

Q Now, if this preferred all converted, approximately what percentage of Schenley would Glen Alden own?

A I would say it was in the 60's.

Q About 66 per cent?

A Approximately, yes.

Q So we have Glen Alden owning this on a diluted basis, 66 per cent and the public owning approximately 22--together 34 per cent, approximately. Now in the merger of 1971, and I trust we're coming to the end, because my

chalk is coming to an end, in 1971 Schenley became owned completely by one--100 per cent by Glen Alden, is that correct?

A That's correct.

Q These public shareholders, the formal 34 per cent shareholders on a diluted basis of Schenley became owners of Glen Alden debentures?

A That's correct.

Q Finally, so we get our names straight, in 1972 Rapid and Glen Alden merged, is that correct?

A Correct.

Q And the name of the final corporation was changed to Rapid-American?

A Correct.

Q So what we have in 1972 is Rapid with Schenley, correct?

A No. Rapid with Glen Alden. Glen Alden included 100 per cent of Schenley.

Q But is there a separate Glen Alden Corporation in 1972 after the merger of Rapid and Glen Alden?

A I am sorry, you are right. Rapid was Glen Alden and changed the name to Rapid and it owned 100 per cent.

Q Of Glen Alden?

A Of Schenley. 100 per cent of Schenley. I mean looking at the chart, if Schenley merged with Glen Alden and now Glen Alden merged with Rapid, it is all one company.

THE COURT: There is nothing left of Rapid?

THE WITNESS: That's right.

Q Rapid owned 100 per cent of Schenley, it was a wholly-owned subsidiary, they were not merged?

A That is correct.

Q But Glen Alden and Rapid did merge some so there was no surviving Rapid-American Corporation but the name Glen Alden was changed to Rapid-American so in '72 it had this structure.

What happened to Buckingham in 1971?

A 1971, Buckingham at the beginning of the year was a part, 100 per cent owned by Schenley and then later on was sold as a division of Schenley.

Q Now, is it fair to say, Mr. Riklis, that in these changes the corporate structure, and merges and acquisitions, you were the principal responsible for these activities?

A I don't know what you refer to, principal--but I was the chairman of the board and chief executive. The answer is yes.

Q Well, were you the person who recommended to the

board of directors of Glen Alden that Glen Alden acquire Schenley in 1968?

A Say that again please?

Q Were you the person in 1968 who recommended to the Glen Alden board of directors that Glen Alden acquire Schenley in 1968?

A Did I recommend Glen Alden to acquire Schenley?

Q Right.

A The answer is yes.

Q Were you involved in proposing that Buckingham and Schenley merge in 1969?

A In a round-about way, yes.

Q Were you involved in the decision by which Glen Alden and Schenley merged in 1971?

A Yes.

Q And to follow it, were you involved in the decision whereby Glen Alden and Rapid were merged in 1972?

A Yes.

Q Drawing your attention to the acquisition of Schenley by Glen Alden in 1968, could you tell us when you began to negotiate with Mr. Rosensteil for the purpose of Schenley?

A You'll have to excuse me sometimes, and I hope that I get reminded of some of the dates so that I don't

get them mixed up. The early negotiations between Glen Alden and Schenley or between Glen Alden's chairman of the board and Schenley's chairman, and I was not chairman of the board of Glen Alden at the time, started I believe in early 1975 or '76--

MR. LEVIN: '65.

THE WITNESS: I'm sorry, '65 or '66.

Q And do you remember what price Rosensteil were talking about at that time?

MR. SILVERMAN: Objection, your Honor, that is not what he testified to. He said he was not chairman of the board.

A Let me answer that, Mr. Silverman. The negotiations or the discussions, the earlier discussions do not include a price structure. Mr. List who was then chairman of the board of Glen Alden, although Glen Alden was owned more than 50 per cent by McCory, I was chairman and chief executive of McCory, and on the board of Glen Alden and very much involved in the decision to approach Mr. Rosensteil for a question of interest evinced by Glen Alden of a possibility of approaching Schenley by Glen Alden.

After a series of discussions between Mr. List and Mr. Rosensteil, Mr. Rosensteil and I got together sometime in the spring of that year.

Q Who was Mr. Rosensteil besides being the chairman of the board of Schenley?

A Mr. Rosensteil was the chairman of the board and chief executive of Schenley, the largest shareholder individually and with his family, and with the foundation that was the ownership of his wife's stock who had died, the majority--not majority but the major shareholder of Schenley's stock.

Q Approximately what price were you discussing?

A When Mr. Rosensteil and I met in the spring of that year, and it could be '65 or '66, I don't remember exactly, the price that I told him I might be interested in was approximately $30 a share.

Q At that time what was the market price?

A The market price was in the early or mid 20's.

Q Now, to review it quickly, in 1966 were you talking about, this is the later year, 45 or $50 per share?

A I beg your pardon?

Q In 1966, were you--you said you weren't sure whether the $30 was 1965 or '66.

A No, I didn't say that. What I said I'm not so sure whether the date was 1965 or 1966 when we first approached, if somebody will--

Q I believe, if you will take my representation

that your testimony was that in your deposition that it was 1965 when Mr. List contacted you, and you went to Washington to meet Mr. Rosensteil.

A That's accepted. It was in the spring of 1965 that I approached Mr. Rosensteil on the price of approximately $30 a share.

MR. SILVERMAN: May I have a clarification whether it is pre-split or post-split?

THE WITNESS: $30 was the price of Schenley at the time. The split did not occur until sometime between the moment that we purchased 18 per cent from Mr. Rosensteil until the time that we made the tender offer to the public.

Your Honor, the price that was paid to Mr. Rosensteil in March or April of '68 was approximately $80. The stock has split three for two between then, and the time that we cleared our proxy to make the tender offer to all shareholders which is where you get the number of 53 something on the post-split stock.

Q In 1966, were you talking with Mr. Rosensteil about the price of 45 or $50 pre-split, approximately?

A Discussions with Mr. Rosensteil have lasted over a number of years and with the exception of a price of $30 at the beginning, we have never had any kind of a

discussion of what do I offer now or what do I offer then. Mr. Rosensteil stuck to his contention that he will not sell for less than $100 a share. And as time proceded from then on, from time to time, I mentioned to Mr. Rosensteil that I might be willing to increase my thinking from $30.

I may remind you that in the spring of that year when I discussed it with him, the price of 30, right after that, the corporation itself, Schenley itself, has made a tender offer to all its shareholders to purchase the stock at $32. At which time almost 50 per cent of the stock was tendered at 32, but only one million shares were purchased by the corporation.

Q Do you remember that $32 was a premium ~~off~~ over the market price at the time?

A It was a premium and naturally the number of people availing themselves of that was very large.

Q Do you know approximately how much the premium was?

A No, I do not.

Q When you say you were thinking, when you telling Mr. Rosensteil you were thinking of increasing your price, was it always understood between you and Mr. Rosensteil if you ever offered, that you were going to offer above

the market price of the stock?

A I don't understand your question.

Q What I am trying to establish is whether or not the negotiations with respect to price--let me begin again.

Was it your understanding always that if you bought Schenley you were going to buy higher than the market price at the particular time?

A I don't believe that that question of understanding ever came into being. I would presume, I mean from a logical point of view, if I offered below the market price, nobody will take it. But--

Q Did you think you could get it for the market price?

A I'm sorry. I don't think the same way that you are trying to tell me to think.

Q That is perfectly okay. When you and Mr. Rosensteil were discussing these matters, did Mr. Rosensteil make any conditions about how he wanted to be paid if you ever bought the stock?

A Again, you are presuming either I was willing to pay Mr. Rosensteil what he wanted or that Mr. Rosensteil has agreed to take what he thought I would be willing to pay, which non-existed, was never a discussion as to

how it is going to be paid.

Q Well, putting price aside, did Mr. Rosensteil say to you, if I sell this company, I want to get cash for my ~~stuff~~ stuff, was that an understanding that he had?

A Well, I wouldn't call it an understanding but naturally, in the negotiations of this sort, it was presumed that you are talking about cash but that has never been a part of discussions. I'm only adding to a logical point of view.

Q Did Mr. Rosensteil make it clear to you, that if an offer were made to him, he would want an equivalent offer made to all the shareholders of Schenley?

A Mr. Rosensteil and I accepted the fact that if an offer is ever accepted by Mr. Rosensteil that a similar offer will be made to all shareholders this was quite understood.

MR. ZULACK: Your Honor, I would like to read, I think it might be helpful if you have a copy of the pre-trial order. We are going to be referring to the undisputed facts, and since some of them are long, I would prefer to just refer to them and summarize them and if my summary is incorrect, I wish my friends would object.

MR. LEVIN: May I give a copy to the witness?

MR. SILVERMAN: May I ask what he intends to

do with it?

MR. ZULACK: For instance, we have agreed the price was paid to Mr. Rosensteil.

THE COURT: Let me ask you this. Every lawyer comes to the conduct of his case in an individual kind of way. But rather than have a digression into a byway, here, can't we take the testimony from this gentleman and get from him testimony what you want to get and have our cross examination, and then we'll excuse me.

We will then go on and read from the pre-trial order.

MR. ZULACK: Your Honor, I have to ask Mr. Riklis some questions which are based on undisputed facts, and I didn't want to ask him an unfair question.

THE COURT: Just put to him the undisputed facts to him in a question and go from there.

Q You paid in fact or Glen Alden paid $53.33 per share for approximately 1,400,000 shares which was owned by Mr. Rosensteil ~~in~~ and this group in March of 1968, is that correct?

A This is the undisputed fact--

Q It is. And the undisputed fact is also that Glen Alden required a total of 88 per cent of the common stock of Schenley--I'd like to strike that. Also the

undisputed fact that there was a tender offer in August of 1968 pursuant to which Glen Alden purchased over five million shares at an average price of $60.32 per share including--

MR. SILVERMAN: What's the question, your Honor?

THE COURT: What is the question?

Q The question is, were you offering at that time to all shareholders who purchased their shares at tender offer price, you were making a tender offer to all shareholders?

A Yes, sir.

(Continued on next page.)

2 Q You were. Do you know how many shareholders
3 approximately did not accept the tender offer?
4 A Well, I think if you take the calculations, we
5 owned 88 percent of the stock. That means 12 percent did
6 not accept. To the best of my recollection, on the post
7 split stock, I don't know, I think we had about 8 million
8 shares outstanding.
9 I don't recall exactly how many shares were
10 outstanding of the post split stock so we owned 88 percent
11 of that.
12 Q It would be approximately a million, a million
13 one hundred thousand shares that did not accept the tender
14 offer.
15 The question is, do you know why these share-
16 holders that did not accept the tender offer did not accept
17 the tender offer?
18 MR. SILVERMAN: Objection, your Honor.
19 THE COURT: Objection sustained. Certainly on
20 this foundation.
21 Q Who is Mr. Goldberg?
22 A He was president of Schenley Corporation.
23 Q Do you know whether he in August of 1968, prior
24 to the tender offer, owned Schenley shares?
25 A No, I do not.

Q Do you know David Chernow?

A Yes, I do.

Q What was his position with Schenley in 1968?

A I believe at the time he was financial vice president of the corporation.

Q Do you know if he owned any Schenley shares in August 1968, prior to the tender offer?

A No, I do not.

MR. ZULACK: Your Honor, I would like to introduce the tender offer prospectus which is Plaintiffs' Exhibit 3 for identification.

THE COURT: Any objection?

MR. SILVERMAN: I don't know what it's being offered for, your Honor. What is its relevance to this case? Therefore, I would object for the moment on the grounds of relevance.

MR. ZULACK: Your Honor, we have agreed among --

MR. SILVERMAN: Forgive me, your Honor, I will withdraw. We have said before we will not object.

THE COURT: Received.

(Plaintiffs' Exhibit 1 for identification received in evidence.)

MR. ZULACK: And also I would introduce the proxy statement -- let me show you the proxy statement.

Q I show you, Mr. Riklis, a proxy statement of Schenley Industries, dated September 11, 1968, which Mr. Goldberg is nominated as a director, and ask if it shows whether subsequent to the tender offer Mr. Goldberg owned any Schenley shares?

MR. SILVERMAN: Objection on the grounds of relevancy.

THE COURT: Either the exhibit speaks for itself and it goes in or it can be used to refresh his recollection.

Mr. Riklis, does that refresh your recollection as to whether this gentleman owned any Schenley shares?

THE WITNESS: No, your Honor, it does not refresh my recollection.

THE COURT: Objection sustained.

If you want to offer the exhibit, that is another matter.

MR. MANNING: Your Honor, might I suggest one thing that might save trouble and turmoil.

Instead of all of us objecting at one time, may it be deemed that Mr. Seasonwein and I join in Mr. Silverman's objections, and I will keep quiet unless I have a specific one for my client.

MR. ZULACK: I would like to offer Exhibit 2-A

marked for identification in evidence, the Schenley proxy statement, dated September 11, 1968.

MR. SILVERMAN: I don't understand the relevance and, therefore, I object to it, your Honor.

MR. ZULACK: Your Honor, the relevance is it shows two things:

One, it shows the number of shares Mr. Goldberg owned that he did not accept the tender offer.

Secondly, it shows that Glen Alden had control of Schenley and elected its board of directors shortly after the tender offer.

THE COURT: Let me consider that. Let's go ahead with things that bear on Mr. Riklis' testimony. Why raise it when it does nothing but get your adversaries on their feet and make me wonder why it is there.

Q Do you know Mr. Richard Graham?

A I do.

Q Who is Richard Graham?

A Who is he today or who was he then?

Q Who was he when you first knew him?

A Mr. Richard Graham was a security analyst with a firm in Wall Street.

Q Was Mr. Graham employed by Rapid-American?

A Mr. Richard Graham became an assistant sometime,

I believe, in 1965.

Q What were his duties?

A Mr. Graham's primary duty was to keep abreast of the financial news, corporate news of a number of companies in which I thought we might have an interest.

Q Was Schenley one of those companies?

A Yes.

Q Did Mr. Graham write a report about Glen Alden's possible acquisition of Schenley?

A When?

Q In February of 1967.

A Yes. There is a report that Mr. Graham wrote to me in early 1967.

Q Did you read the report?

A Yes.

Q Was there information in the report which was important to you in your negotiations with Mr. Rosenstiel?

A Negotiations with Mr. Rosenstiel were resumed on a very heavy and hectic pace sometime in January-February of 1968 and I don't know if you could say that they were important but I did want an up-to-date report on Schenley.

Q Mr. Riklis, I am going to read from your deposition which was held on August 28, 1973, I believe, at your offices at 711 Fifth Avenue.

MR. LEVIN: Your Honor, I boject. The witness is here. He can be asked any question the counsel wishes to put to him. He is not being impeached.

THE COURT: What is the purpose of reading?

MR. ZULACK: I was going to read a portion of his testimony where he said this particular report was very important to him in his negotiations with Mr. Rosenstiel.

THE COURT: I think he said virtually the same thing now, didn't he? He said he wanted up-to-date information and I assume this was part of the information, is that right?

THE WITNESS: Sometimes, your Honor, when sitting on a witness stand and a man uses the word "important," you have to put it in a relative nature, what is important.

At that time, "important" to me was the negotiations with Mr. Rosenstiel, to be up-to-date in the corporation and its activities . Whether it was the most important thing in my life at that moment, again it is a question of relative use of the word.

Q Was there information in this report about the standing of Schenley's brands which was important to you?

A Yes. It was important within that limitation that I have mentioned.

Q What was important to you about the brands?

A I think that at the moment when you are negotiating hot and heavy in the ownership of the corporation, your mind begins to go beyond the date that you actually make the deal and you want to more or less a vision of what is going to happen, where does the company stand, what are some of the things that you will have to be thinking for in the future, what are some of the things you will have to put more emphasis or less emphasis on, and ahat is why you want to refresh your memory so that you get your up-to-date thinking as to where things stand.

Q Did you see from the report that certain of Schenley's American brands were on the decline?

A Yes. I saw from the report that in general American brands were on the decline and that Schenley is not faring any better than any of the others.

Q Did you see with respect to such brands as Dewars or Dubonnet or Mateus you thought under your management Schenley could do much better?

A I could see from that report that more emphasis on these brands would probably be the policy that I would like to go forward with, make the winners win more and the losers lose less, and you have a better chance to do better with the company.

2 Q What else in the report was important to you?

3 A I think -- you asked me what was important to me

4 in February 1968 in the report and I read the report.

5 I did not consider the report a word from Mount

6 Sinai and I did not send it to all of the rest of the

7 directors because of that. I just kept it as a report on

8 the company, an up-to-date report by Richard Graham, and I

9 think you have asked me once and I told you Richard Graham

10 is a security analyst. He is not a management man.

11 I want you to understand that so that it is not

12 that Richard Graham can tell me how to run the company. It

13 takes a lot more, but Richard Graham was very important from

14 a security analyst point of view, and I wanted to have a

15 view of those things as a refresher.

16 Q Did Graham's report for what it was worth to you

17 by that qualification, did it contain information about

18 assets which could be generated into cash which was

19 important to you at that time?

20 A I think that you find in the report, and I think

21 maybe it was quoted today by Mr. Silverman, you will find

22 in the report an opinion by Mr. Graham that he feels that

23 the inventories could be halved due to business in the

24 future.

25 He believed that the accounts receivables are

too high. I believedso, too, maybe not to the extent what Mr. Graham believed. But this is a matter of opinion.

Q Do you know whether or not it was Mr. Graham's opinion that Schenley had surplus assets which could be converted into approximately $205 million in cash from the report?

MR. LEVIN: I object.

THE COURT: Doesn't it speak for itself if it so states?

MR. LEVIN: I don't know whether counsel intends to offer the document but if he does, I think there are very serious objections that may be interposed because the document on its face is a series of opinions, conjectures, speculations, ruminations and hardly rise to the level of evidence.

If it is offered for the limited purpose of establishing that this particular document with all of its limitations came to the attention of Mr. Riklis, I would have no objection, if that were the limited purpose of the offer.

THE COURT: I would admit it if that was all it was being offered for.

MR. ZULACK: I am offering it for what it says, your Honor.

2 THE COURT: If you are offering it for the
3 underlying truth of the facts, I will not accept it for that
4 at this time.
5 MR. ZULACK: Your Honor, I am offering it as an
6 admission under Rule 801-D(2)(c) or (d) by an admission by
7 an agent of Glen Alden or Rapid-American or Mr. Riklis, and
8 I believe, as I understand the rules, whether it is an
9 opinion, whether it is correct, whether it is incorrect, is
10 irrelevant. It is an admission.
11 Whether it is true or not is not -- we believe
12 there is a lot that is true but for admissibility purposes,
13 we do not believe the fact it is an opinion should exclude
14 it. I think the rule is very clear on that, your Honor.
15 MR. LEVIN: If your Honor please, the rule
16 goes to the question of the admissibility and not to any
17 other question.
18 MR. ZULACK: As to credibility, as to weight, I
19 think that is a different question.
20 MR. LEVIN: The rule does not stand for the
21 proposition it may be offered for the truth of the
22 statements contained in the statement.
23 MR. ZULACK: I am not admitting it for the truth
24 of the statements contained therein.
25 THE COURT: Then we are back where I thought we

were. It will be admitted as an instrument prepared by one of your juniors and given to you and you were aware of its contents at that particular time.

For that purpose, I will admit it in evidence at this point. If it later becomes admissible for more, we will see what happens.

MR. MANNING: It is admitted as an admission by or on behalf of Glen Alden, but I have a specific objection to it --

THE COURT: It isn't an admission at all. It is being admitted as not an admission.

MR. MANNING: I object to it for all purposes on behalf of Schenley and all Schenley defendants.

THE COURT: Unless it is connected to you, it has no binding effect on you.

Mr. Riklis had one of his juniors make it for him and he looked at it and he was aware of its contents.

MR. ZULACK: Your Honor, are you ruling that it cannot be admitted as an admission under 108?

THE COURT: I don't see how this becomes an admission as to the underlying facts of some other corporation, point number one.

This is Rapid-American's employee assessing Schenley, am I right?

THE WITNESS: Yes, sir, your Honor.

It is not an assessing. It is a matter of bringing up to date a lot of information about its whiskey business and everything else and an opinion that Schenley is a cash-rich company or potentially.

THE COURT: How does this become an admission of any fact having to do with a company by which the man is not employed who made the report?

I have ruled it only on that basis.

(Plaintiffs' Exhibit 5 for identification received in evidence.)

THE COURT: We are at five-of-one. Why don't we recess until ten-after-two and take our luncheon break.

(Luncheon recess.)

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AFTERNOON SESSION

2:00 p.m.

M E S H U L A M R I K L I S, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. ZULACK:

Q Mr. Riklis, did Mr. Graham make the decision to pay $80 a share for Schenley stock in 1968?

A No.

Q Who did?

A Well, that decision was reached between the offer that Mr. Rosenstiel made to sell it at $80 and my final decision if I can raise the money and arrange the financing, th we will pay that subject to a board of directors approval.

Q Did the fact that Mr. Graham opined that you coul pay $80 a share and that was his recommendation that you pay it have anything to do with your decision?

A None whatsoever.

Q Mr. Riklis, are you familiar with a suit entitled Sanders v. Riklis, which was brought by certain shareholders against you and Glen Alden in connection with the 1968 merger.

A I am not familiar with it.

Q The tender offer.

A Beg pardon?

Q In connection with the tender offer.

A I am not familiar. If you want to remind me of it.

Q Okay.

There was -- it's part of an undisputed fact that a shareholder of Glen Alden brought a suit in 1968, in the spring of 1968, in which the claim was to -- the remedy sought was to enjoin the tender offer, and one of the claims was that the price which Glen Alden paid for the shares,was going to pay in the tender offer was excessive.

Are you familiar with the fact that there was a suit?

A I can't -- I am not familiar with it. I take your word for it, it's an undisputed fact.

Q It's also an undisputed fact that an affidavit of Allan Greenberg was filed in that suit.

Have you read the affidavit of Allan Greenberg?

A To the best of my recollection, I don't remember whether -- I don't exactly remember whether it was shown to me during the deposition. I don't remember seeing the affidavit.

Q You don't remember seeing the affidavit.

I show you a copy of it.

MR. ZULACK: Showing the witness a copy of an affidavit by Allan Greenberg.

A I accept it.

Q And you accept that Allan Greenberg was hired

by Glen Alden to submit this affidavit in the lawsuit?

A I do.

MR. ZULACK: Your Honor, I offer this affidavit in evidence on the same basis that the Graham opinion was offered into evidence.

THE COURT: It will be received on that basis.

MR. SILVERMAN: Same objection.

THE COURT: It will be received on that basis.

(Plaintiffs' Exhibit No. 6 was received in evidence.)

MR. ZULACK: Your Honor, I also would like to state my offer, if it wasn't stated properly before, both to this report and the Graham report, that I do believe these are admissions and should be accepted into evidence on those bases.

THE COURT: This will be more so than the other.

What fact is it that you want to deem admitted?

MR. ZULACK: The fact I want to be deemed admitted was that Glen Alden had information, as reflected in both the Graham report and the Greenberg affidavit, upon which it based its investment decision to purchase the Schenley shares at $53.33 a share.

THE COURT: No one will dispute that with you.

MR. LEVIN: We do not concede by a long shot that whatever Mr. Greenberg opined to or whatever Mr. Graham opined to was a factor in the determination as to what the purchase price of these shares should be.

MR. SILVERMAN: As a matter of fact, Mr. Greenberg's affidavit was prepared after the event, and Mr. Greenberg's affidavit makes some statements about the reduction of inventory and accounts receivable, and those estimates, as it turns out, were wrong.

Now, if he wants it in for the fact that Mr. Greenberg made these estimates, assuming that that's relevant in some way, I won't pursue the objection. I can understand that it might be taken for whatever it may be worth.

MR. LEVIN: I would respectfully call your Honor's attention to the fact that Mr. Greenberg has been subpoenaed and presumably the day will come when Mr. Greenberg will take the stand and be subjected to cross-examination.

This is, I think, for purposes of this proceeding, hearsay. It's opinion. It was offered in a different proceeding.

THE COURT: At this point I'm not going to broaden my ruling on the scope of its use. I will give consideration to it, however.

If anybody wants to give me any authorities, I will be glad to accept them.

MR. SILVERMAN: If your Honor please, the only authority I would put to your Honor is the fact that that document was referred to in both Judge Lasker's opinion and in Chancellor Marvel's opinion, and your Honor will see that it was given such weight as it was entitled to receive.

MR. ZULACK: Without belaboring it, I could give you a short statement of authority, what I consider to be a short statement of authority right now.

THE COURT: Let's do this at the end of the day and I can check it out.

Q Mr. Riklis, did you have an opinion in 1968 about whether or not Schenley had excess assets, that is, assets which could be converted into cash?

A I don't have an opinion. I had my own feelings, my own estimates. You can call them opinions if you want.

I felt that Schenley's production of the earnings based on the assets employed calls for a reduction in the inventory and a reduction in the accounts receivables and the possibility of the sale of some of the assets of the company that are not producing a proper return on invested capital.

Q How much did you think could be generated from the sale or reduction as you explained it?

A I can give you only a general idea, a general feeling, in a case where I was not privy to the internal operations of the company, just by looking at it from the outside, and I felt that the production of earnings in the company on the inventories carried, and based on some of the rumblings that I heard in general, that some of the Schenley's inventories are a little outdated and are carried on the books at a price that probably is a little bit unrealistic, but that no matter what, they are not being used in the everyday running of the business.

I felt that approximately $40 million of inventories could be reduced. I felt that about $20 million of receivables could be reduced. I felt that some $10 to $15 million of other assets in the company, particularly the wine business and the food business, that were not quite what I thought the company should be in. I felt that these were the numbers.

By the way, I think you have asked, or it was asked me before: My estimate proved to be on the high side, so that again -- but you asked me -- I was asked this before, and I believe that that's -- these were my estimates. $20 to $40 million on the inventories, about

$10 to $20 million on the receivables, and about $10 to $20 million on other assets.

Q What plans had you made, if in fact you had generated that cash, what plans did you make for that cash?

MR. LEVIN: I assume he means what plans, if any.

Q If any.

A You are talking about plans at the time that I don't even own the company yet. You are --

THE COURT: In 1968 if you had no plans, the answer is "I had no plans."

THE WITNESS: Your Honor, I am right. I was trying to be helpful.

Q Did you intend to pay for the purchase price of Schenley, or part of the purchase price of Schenley, from the cash generated from the disposition of these assets?

A Glen Alden was buying the stock and there was no intention of taking money from Schenley into Glen Alden in 1968.

Q I am not talking -- did you have any intention at a later date -- in 1968, did you have an intention that sometime in the future, after these assets had been generated into cash, that you use that cash to pay for the

purchase price of Schenley?

A I had no intentions.

MR. ZULACK: Your Honor, I'm going to refer to --

Q Mr. Riklis, I'm going to read a portion of the transcript of the deposition which you gave on August 28, 1973, in the case of Gibbons v. Schenley Industries, Page 48. I will read you this question and ask if you gave the -- if the question was given to you and if you gave the following answer:

"Q When you say approximately $500 million, you were talking about cash and market value of the cash equivalent?

"A Right. The calculation one makes, which I would make, let me put it this way. That one makes, I would make. How long do I have the $50 million and where do I find $150 million? If I can see my way in paying the $50 million sometime in the next five, six, seven, eight years, out of cash generation from the disposition of nonproducing assets and if then I can say I can pay for it over a twenty-year period, over a thirty-year period, 6 percent on $350 million is $20 million."

My question to you is: Did you at that time when you were being deposed say that in determining in 1968 how you were going to pay for the purchase price of Schenley,

you conceived of paying $150 million of the purchase price of Schenley from the disposition of these nonproducing assets?

A I am sorry --

MR. SILVERMAN: I must object to the form of this question.

THE COURT: Sustained as to form.

Q Did you give that answer?

A I am betwixt two things. You asked me there about a philosophy of buying a company --

THE COURT: Mr. Riklis, you had a question and answer read to you. Do you remember being asked the question and is that the answer you gave?

THE WITNESS: Yes, sir.

THE COURT: Next question.

Q When you gave that answer --

MR. ZULACK: Strike that, please.

Q In 1968, when you were buying Glen Alden, did you calculate that you would pay $150 million of the purchase price from the disposition of nonproducing assets of Schenley?

A No.

Q Let me repeat the question --

MR. ZULACK: Would you read the question back,

please.

(Question read)

Q I am sorry, Mr. Riklis. I meant to say when Glen Alden was buying Schenley for approximately $500 million in 1968, did you calculate that Glen Alden would get $150 million from the disposition of nonproducing assets of Schenley for the purchase price of Schenley?

A No.

Q Did you calculate that Glen Alden would pay for any part of the purchase price of Schenley from the cash generated from these nonproducing assets?

A No. Glen Alden was buying the company right then and there and was paying for it right then and there.

Q Did you enter into loan agreements at that time to borrow cash, to borrow money to pay for the acquisition costs?

A I'm sorry, I don't understand.

Q Did you, in 1968, enter into agreements with lending institutions whereby you borrowed cash?

A Yes.

Q Was that cash used to acquire Mr. Rosensteil's stock, for instance?

A Yes.

Q Did you contemplate paying, repaying those loans

from cash generated from Schenley?

A I was not contemplating.

Q When you met with your board of directors in March of 1968 -- when you met with your board of directors, the Glen Alden board of directors in March of '68 prior to the time that you -- that Glen Alden had actually purchased Schenley, did you set forth your plans for Schenley, if, in fact, it were purchased, to the Glen Alden board?

A I don't recall any specific plans except for the operation of the company.

Q Did you have any discussions with your board concerning the generation of cash of Schenley's nonproducing assets?

A I may have some.

Q Do you remember what you said to the board of directors at that time?

A No. I don't remember.

The only thing I can guess is I must have talked about the fact that I thought that inventories could be reduced, receivables could be reduced. There would be some assets that could be disposed. In general, to produce bigger earnings for the company, more lucrative return on invested capital.

Q Was it a basic program which you had to implement, a program to generate cash from --

MR. SILVERMAN: Objection.

THE COURT: Objection to form sustained.

Q Did you say to the board, "My basic program with Schenley will be (a) financially to generate as much cash as I can from the the sale of assets which will not lower profits," more or less?

A I did not, more or less.

Q Mr. Riklis, I again am going to read to you from your deposition. I'm going to read the question and the answer on Pages 96 and 97 of the Gibbons deposition and ask you if you remember this question being asked and if you gave this answer:

"Q Cool and lively discussions that were held at the board meeting. The three general areas were discussed. The first I understand, and that is the board wanted to know whether Rosensteil was, as you said before, playing cat and mouse, or whether he really was going to sell for $80 a share. The second was your program for the company, which certainly would interest them because they wanted to know what you were going to do when you took it over.

"At that point what enlightenment did you give

them?

"A My basic program in connection with Schenley, as I described it at that time, at the time, I must tell you not everything I succeeded in, but some things I succeeded more than I expected.

"My basic program with the company was to (a) financially generate as much cash as I could from those assets that could be sold without affecting or lowering potential profits of the company."

Do you remember that question being asked and giving that answer?

A Absolutely. I think I gave you the same answer now.

It's all a question of what sentence you put first. The generation of earnings with an improvement in the company, and generation of cash from unproducing assets, or generation of cash from unproducing assets to improve earnings.

You put the sentence any way you want; it's the same thing.

Q My question is what plans, if any, did you have for this cash which was to be generated from this program?

A I am sorry. You see, a plan of any company that is to be acquired or anything not acquired that we have is to

get a better return on invested capital, which means higher earnings with a lesser amount of invested capital, which means lesser amount of invested capital.

A disposition of anything that's not producing the kind of profit that is a proper return on invested capital, that could vary from one company to another, a retail from manufacturing, and so on and so forth.

But the generality of it is the same.

THE COURT: I don't think you had an answer to your question, which was "Did you have any idea in mind of what you would do with cash generated if you were to generate it?"

THE WITNESS: No, sir, I don't know if this is the question he asked.

MR. ZULACK: That was my question.

THE WITNESS: No, sir, we had nothing in mind.

THE COURT: Go on.

Q In October of 1968, when Glen Alden took over control of Schenley, did you put into effect any policies which were changes from the Rosensteil management?

A The basic policy that I put in, I don't if you call it a policy, I changed the top man and felt that the rest of the executives should be given a little bit more leeway in the decisions of the everyday running

of the company.

That was it. If you would call it a basic policy change, that's the extent of it.

Q Did you introduce any policies to reduce inventory?

A Only to the extent that inventories are to be reduced if they are nonproductive. And, again, this is not a policy that a memorandum went out to every company head. It was a general understanding between Mr. Becker and myself.

Q What was the policy that you put into effect to --

THE COURT: Mr. Becker became the president?

THE WITNESS: Chairman of the board.

Q With respect to that policy, the policy to reduce the amount of inventory or assets which were not productive, inventory in particularly, what was that policy?

A That was the policy.

Q What were the components of it? What did you do?

A Nothing.

Q How did you do it?

A I don't understand your question. Maybe I don't understand your -- maybe I don't understand the language, but if you say to me, "What was your policy?", I told you

what was my policy. I did not write it out in a memorandum. Everybody didn't come every Monday and Tuesday to report to me that that policy is being adhered to. It was an understanding that that's the way we run a business.

Q Did you know -- were there any mechanics to the policy in basic -- generally?

A I'm sorry. I can't answer that.

Q Was it part of a policy to reduce production of bulk whiskey inventory?

A Depending on the future projections of needs of the inventory.

Q How about --

A You realize that whiskey is made today and bottled four, five, six years later.

Q You did not, with Mr. Becker, decide that you were no longer going to produce the same quantities of whiskey that Mr. Rosensteil produced under his management?

A That might be a fair presentation, although it's not the whole story.

Q What is the whole story?

A The whole story is you do that based on the projection of consumption in the future, which is only a projection. If you find five years from now you are going to need that many cases of bourbon, depending on the

projection of what will be consumed at that time, you produce accordingly and you barrel that whiskey. You take into consideration the amount of whiskey that will be evaporated over those years, and how many cases it will make, and then you give yourself a leeway, 10 percent up, 10 percent down.

Q So there was no fundamental difference in philosophy between your management and Mr. Rosensteil?

A There is a basic business philosophy. I thought that's what you alluded to before, and that is, I believe in projecting as accurately as possible and try to produce towards that goal and not produce twice as much because there may be a war and there will be a shortage of whiskey coming from Europe.

Q Was that Mr. Rosensteil's philosophy, to produce twice as much?

A In part, that's what has been happening before that, that they have overproduced and have had some excess inventories. And the inventories were getting old.

It's not different than running a store and you buy inventory, and you buy more because you think you are going to have a better Christmas season.

Q When you bought this store, didn't it have substantially more inventory than you needed?

A That's very possible.

Q Didn't you decide, since it had substantially more inventory, that you didn't have to go out and produce as much for this next Christmas season because it was already there?

A Very much so. It's very possible.

The only thing you have to understand in this case is that we had inventories that we liquidated, and at the same time, for one reason or another, whether it is better management, whether it is better consumption, sales have gone up, and the same inventory that you have reduced, that was six and seven and eight and nine and ten years old that you sometimes had to redistill and put in the bottles with some losses, you had to distill and project into the future because our sales were coming along very well.

Q Correct me if I'm wrong, Mr. Riklis.

I understood that there was a fundamental difference between your ideas of production and Mr. Rosensteil's ideas of production and that --

A No, whiskey is produced the same under Mr. Rosensteil and under Mr. Riklis.

Q Was there any difference -- was there a major policy change between yourself and Mr. Rosensteil with

respect to accounts receivable, the reduction of accounts receivable?

A I don't think there were major policies. I think that Mr. Rosensteil has been in the business a long time. Some of the peoplehe has been doing business with were associates of his for a long period of time.

I think when I came into the picture, even though I was not directly involved, there was a lot less personal relationship. It was a little bit more impersonal, and I could probably put my foot down as to the amount of credit that could be given to this distributor and that distributor, and that, in my opinion, was the reason why I felt that you could come to a new situation like Schenley and reduce the amount of receivables,and it will not hold for very long. You will only have a very temporary effect.

It depends on the amount of business you do. If you do more business, you will have more receivables.

Q Did Mr. Rosensteil have a policy of loading up distributors whether they asked --

A That was the rumored scuttlebutt that I have hears, not having had access to the books directly. I must say it was overexaggerated.

Q So it is your testimony that the reduction --

MR. SILVERMAN: If your Honor please, I will

object to a question in which he attempts to sum up testimony.

Q Was the reduction in receivables a major policy difference between you and Mr. Rosensteil?

A No.

MR. ZULACK: Your Honor, again --

Q Mr. Riklis, I'm going to read from your testimony on Page 66 --

THE COURT: Even if he said yes, where do you get to?

You may get us somewhere but --

MR. ZULACK: I'm not trying to -- I'm just hearing Mr. Riklis substantially in a different way than how I heard him and read him in depositions, and I think that I understood that there was substantial policy changes made, and I heard Mr. Riklis as saying no, there really weren't very major policy changes made, and I think it's important for your Honor to have that understanding --

THE COURT: Does that add anything to the fact that Mr. Graham made him a report and that was his belief or his own, whatever his expectation was as to these reductions, the expectation as to the reductions, what you contend he had in mind to do with them was not -- whether he or Rosensteil had conflicting theories on accounts

1 receivable sort of escapes me.

2 It seems to me it's a question of how he looked

3 at the company, what he saw could be done with it, and what

4 he had in mind to do with it. That may or may not be

5 your case.

6 MR. ZULACK: One of the factors in our case

7 was that there was a program designed as such to accumulate

8 an enormous amount of surplus chash, and there were several

9 components of that program.

10 When the purchase was made, there was a recognition

11 by Glen Alden that this surplus -- these excess assets

12 were there and that when they came in in 1968 they started

13 implementing this program in a very methodical way.

14 THE COURT: Let's look to that. This other,

15 I don't see the relevance of it. Maybe I am missing

16 something.

17 MR. ZULACK: I was going to read a portion of

18 Mr. Riklis' testimony where he said, "Yes, this is one of

19 the major changes we had." If that is not important, I

20 will not read it.

21 THE COURT: You know better than I whether it is

22 important, so you go ahead.

23 MR. ZULACK: I would like to read this statement.

24 Q The question is on Page -- again, was this

25

question asked of you and did you give the following answer:

"Q What assets, whether Graham recognized them or not, did you recognize as possible cash-convertible assets?"

Since we are only discussing accounts receivable, I will skip a portion --

MR. SILVERMAN: Let's read the answer.

MR. ZULACK: I will read the whole answer.

Q On Page 66, let me read the question again:

"Q What assets, whether Graham recognized them or not, did you recognize as possible cash-convertible assets?

"A They were a part of the Schenley that, based on information gathered from dealers -- not dealers, distributors and others in the field, including Lew's own admittance that he's over-inventoried.

"Lew's persistence in being over-inventoried may be a reflection of the times that Lew had lived in the United States with wars and other situations of that kind, supplies were cut off from overseas, therefore, he would have been right, let's say, if in 1962, there would have been a war, based on Cuba, you would have been right, he would have inventories where others did not.

"It was obvious that there are higher than normal inventories within Schenley.

"Also, we have changed later --

MR. SILVERMAN: Would you read that again?

Q -- "We have changed later on the concept of loading up the distributors with merchandise and therefore increasing your receivables, it will then take a long time for the distributor to sell the merchandise.

"We have stopped that, for example, as one of the major policy changes, as a result our receivables went down."

Do you remember that question being asked and that answer being given?

A Absolutely. I would like you to read your question back.

THE COURT: Just wait for the next question.

Q What was your evaluation of Schenley's wine business in 1968?

A My evaluation at the time was that it was small, relatively unimportant, and quite unprofitable.

Q Didyou anticipate selling Schenley's wine business?

A Yes.

Q And you did sell Schenley's wine business?

A Yes.

Q What effects does a reduction of inventory have

on the balance sheet?

A. I beg your pardon?

Q. If you reduce inventory, does that create a cash increase on the balance sheet?

A. Eventually, yes. It temporarily will create maybe accounts receivable and will convert to cash on the asset side.

Q. With the merger between Buckingham and Schenley, Schenley got $33 million from Buckingham; correct?

A. Approximately.

Q. When you were negotiating with Mr. Rosensteil in 1968 and prior to 1968, were you aware of the possibility that Mr. Rosensteil --

MR. ZULACK: Let me strike that.

Q. --- were you aware that Mr. Rosensteil was contemplating selling Buckingham for $20 a share?

A. Yes.

Q. Were you aware that Buckingham had an antitrust problem or Schenley had an antitrust problem with Buckingham?

A. Yes.

Q. What was the nature of that problem, in your view?

A. I'm not a lawyer to pass judgment of that. The only thing you asked me if I knew about the fact that they

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had been charged by the Government on an antitrust. That I do.

Q Did it relate to the fact that Schenley had distributed not only Cutty Sark, which was a top-selling scotch, but also Dewars?

A It was distributing Cutty Sark, which was one of the two top-selling scotches, and it was also distributing Dewars, which was not one of the top-selling scotches.

Q But were you aware of the possibility that Buckingham might be sold if you acquired Schenley?

A I was aware of the possibility that we will not be allowed to keep Cutty Sark, yes.

Q On or about October 30th, towards the end of October, Schenley entered into a memorandum of understanding with Northwest by which this --

MR. SILVERMAN: What year are we talking about?

Q 1970.

-- by which Buckingham was going to be sold to Northwest Industries; is that correct?

A That's correct.

Q And in May of 1971, that transaction was completed; right?

A That's correct.

MR. ZULACK: I would like to offer into evidence,

to which I believe there is no objection from our pretrial order, Exhibits 117, 118 for identification.

117 is the memorandum of understanding dated October 30, 1970, and 118 is the stock purchase agreement dated May 10, 1971.

MR. SILVERMAN: No objection.

THE COURT: Received.

(Plaintiffs' Exhibits Nos. 117 and 118 were received in evidence.)

Q Counting the receivables which will reduce the inventory production, the sale of the wine business, the sale of Buckingham, the transfer of money from Buckingham to Schenley, how much cash did Schenley generate between 1968 and 1971?

THE WITNESS: I'm sorry, your Honor, I cannot accept that as a question --

A Because you are taking 1968 and you are taking 1971.

As a matter of fact, inventories to the best of my recollection are either on the same level or maybe a little higher or a little lower between 1968 and 1971, so there was no cash generation from inventory.

I think you will probably find that within the receivables there is also a very little difference. There

is a cash generation from the sale of the wine business, and I don't recall exactly what year it was made.

The sale of Buckingham occurred in May 1971, and the figure is $120 million. The amount of money that was generated from Buckingham into Schenley a year or so earlier, I don't remember exactly when the merger was consummated between Buckingham and Schenley, was approximately $30 million.

(Continued o n next page)

2 Q So what is the total amount, regardless of source,
3 that was generated?
4 A There is no question of total amount. There was
5 120 from the sale of the company and 30 from the money that
6 came from Buckingham to Schenley and I don't think there was
7 anything from inventories and probably was very little from
8 receivables. What do you want to add? You tell me what
9 numbers you want to add.
10 Q I want to again read from your testimony before
11 Mr. Starrgett on page 157. And the question begins on page
12 156. I will ask if you remember this question being asked
13 and if you remember the answer you gave.
14 "Q During the discussion we had yesterday, you told
15 me that you had various hopes and that your program involved
16 the cutting away of fat and the liquidation of certain
17 Schenley assets. I told you that we would be discussing
18 that some more. I would like to discuss that with you now.
19 With the sale of Buckingham, how much cash was generated for
20 Schenley.
21 "A I think you were asking similar questions that
22 the newspaper man asks. He gives you the broad brush, how
23 much cash. It is not a calculating thing which you can
24 calculate because you may have cash generated from inventory
25 and cash generated from receiving, and yet you take on a new

product and there are new inventories. I think if I took you for what answer you want and gave you a more or less calculation also in the broad brush, I would say with the sale of Buckingham and its own cash, with the sale of, with the disposition of some of the inventory on the net basis and the wine and the receivables, I would say that there would be about 160, 170, about 200, $220 million."

Did you give that answer?

A I was too helpful.

Q Was that the answer you gave?

A No, it is not because when you asked me now --

Q Was it the answer you gave.

A That's the answer I gave.

Q May I read you another -- do you remember being interviewed by a reporter from New Yorker Magazine?

A I do.

Q I'm going to read you a quote from that article and ask you whether or not this is an accurate statement of what you said.

"So here you are," Rick says, "when we started out Schenley was $160 million into the banks and had $30 million cash. Three years later Schenley has got maybe $80 million in cash and is into the banks for a hundred million. That's a $60 reduction in the line and a 50 million increase in cash.

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2 $110 million dollar difference in cash already. With the sale
3 of Schenley's Buckingham subsidiary (under a Federal
4 Trade Commission order) indicating not part of the
5 quote, it will be a $230 million difference. Next year
6 without Buckingham Schneley will make as much as it made
7 with Buckingham three years ago and I will be sitting with
8 $200 million in cash. That's what I saw in Schenley. The
9 great possibility of its being a huge cash generator generating
10 more cash than I put into it."
11 Did you say that?
12 A Yes.
13 Q How much cash was generated from all sources,
14 inventory, receivables, Buckingham, the sale of the wine
15 business?
16 A I am sorry --
17 MR. SILVERMAN: Does my friend include earnings
18 in his question? That is, accumulated earnings?
19 MR. ZULACK: I will withdraw the question.
20 Q When you acquired Schenley in 1968, did you
21 feel that you were overpaying?
22 A A little.
23 Q How much?
24 A There is no -- it's not a definable thing.
25 Q Can you give us a range? Was it a dollar, two

dollars?

A I can't give you a range. You have discussed it with me, your associate discussed it with me before and I have tried to explain that when you deal in a situation like the purchase of a controlling interest in a company like Schenley depending on outside activities like outside bidding that's involved there too, you eventually reach an understanding on the price based on what the person wants and what you are able to pay. The price was high.

Q Was it higher than what it was worth?

A There is no such thing as what it was worth. It was the price that would buy the company. If you want to pay less, maybe you wouldn't get it.

Q Would it be correct to say you thought you were overpaying substantially for the company?

A I don't know what the word "substantially" means. If substantially is the question of whether a person that makes $20,000 a year is going to have to come up with a bill of $20,000, that will be substantial but if a person has an income of half a million dollars a year and he will have $20,000 to come up with, it will not be substantial.

You asked me the question and I believe I have answered it a number of times. I felt and it is a feeling that I was over-reaching. That it was a little too high.

But it was the only price and the only time that I could get it. I have answered also that I looked at it from a very long-term point of view. I think you have quoted me on some of the calculations. I have looked at it as a 20-year proposition. I have looked at it as the kind of improvement that I might be able to achieve in the company and you have quoted some of my bragging a minute ago. That we have achieved it in a short period of time.

Q Is it still continuing or was it after 1971?

A Is the company continuing to do well? Yes.

Q You talked about 200 or 220, I don't want to pin you down to an exact figure but in 1971 after the merger were you continuing to try to generate cash?

A Sir, let me say one thing. You are quoting me so don't put words in my mouth. I never said that there was $220 million sitting in the bank in Schenley and when you tried to say that I said that, I did not and I have to say no. If you want more of an explanation I will try to go into it.

Q Please.

A The company has continued to do well since 1971 also.

Q In terms of cash generation on the balance sheet as well as earnings?

A Yes. Cash generation comes from a lot of items. It comes from sometimes reduction of inventory, reduction of receivables, sale of assets and retained earnings. And that has continued to do well.

Q Were you continuing to reduce inventories after, say, June of 1971?

A No. I believe that you will find that our inventories today are higher than they were in 1971 or 1972. One of the reasons for it is we are doing more business.

Q Did the inventory reduction between May of 1971 and December of 1971 continue?

A I don't know what you are talking about.

Q You said inventories in 1975 were higher than perhaps they were in 1971 or 1972. Were inventories lower at the end of 1971 than they were as of the end of May of 1971?

A I have no idea and if they were, it was a very insignificant amount.

Q Did you think that Schenley was a good buy? In 1968 --

MR. SILVERMAN: If your Honor please --

THE COURT: Sustained.

Q Did you think in 1968 when you bought Schenley, did you think that regardless whether you thought you were overpaying or not, it was a good deal to make?

MR. SILVERMAN: Objection.

THE COURT: Sustained.

Q In 1971 did you have any reservations about the amount which you paid for Schenley in 1968?

MR. SILVERMAN: Objection.

THE COURT: Sustained.

Q Was it your opinion --

MR. ZULACK: Your Honor, could you rule on that objection, please. I except to that. I don't have to except but I would like to know the grounds for that ruling.

THE COURT: The form is bad in my opinion. I'm not sure the substance is relevant but the form is bad.

MR. ZULACK: I will try to rephrase the question.

THE COURT: Suppose you got him to say he had some feelings about it in '71 directed towards what he had done in '68. Even if so, then what?

MR. ZULACK: That would be the next question, your Honor. This is a foundation question for a later question. Mr. Riklis said --

Q Did you think that Glen Alden's investment in Schenley was less valuable in 1971 than it was in 1968?

MR. SILVERMAN: I don't understand that question.

A I tell you, counselor, I don't either.

Q Was it your belief that Glen Alden's investment

in Schenley had declined in value in the interim between 1968 and 1971?

A Again, I don't understand what does it mean, "declined in value?" Schenley is now a wholly-owned subsidiary of Glen Alden.

Q By that time was it worth less?

A I'm not selling. What do you mean, "worth less?"

Q Is it worth less than $53.33 or $58, whatever you paid for it?

A I'm sorry. If you asked me whether it was a price that I thought was a fair price, I answered that I don't believe that it was an unfair price. I was over-reaching a little bit. My judgment on that was because of looking at it from a very, very long-term point of view. I have calculated it for you on that broad brush type of a calculation. Whether you asked me today if I have a good investment, I am sorry, I'm not selling. I'm not looking to get a price for it to know whether it is worth more or worth less. I'm not selling.

Q Was it your opinion --

MR. SILVERMAN: Mr. Zulack, may I interrupt for a moment. If your Honor please, this record, which is going to be transcribed, ought to, I think, reflect accurately what the witness meant. I think he used the word --

2 MR. SILVERMAN: I object to that, your Honor.

3 MR. ZULACK: If we are playing that kind of a

4 game -- if your Honor please, I believe it fair to say Mr.

5 Riklis has some -- who was not born in the United States, has

6 some difficulty with the language and the precise use of

7 words. He used the word "over-reach." I was just trying to

8 kind of clear up the record but my friends obviously intend

9 to make something of that word and I do not think it

10 appropriate in light of this for me to tell your Honor what

11 I think that the word was, but "over-reach" has connotations

12 that my friends now appear to want to make something of.

13 THE COURT: It is interesting you say that because

14 I didn't get any of the flavor that you are concerned with

15 from that answer, but I would certainly allow you on cross

16 examination to have Mr. Riklis make perfectly clear what he

17 meant when he was describing that situation. I didn't get

18 that flavor. I think I understood what you are expecting him

19 to be saying regardless of his choice of language. Go ahead.

20 I thought you were addressing yourself to a different problem

21 and that's a question of what the word "worth" means, because

22 there Mr. Zulack is using it in one sense and Mr. Riklis is

23 clearly using it in another sense and that's why we are not

24 getting an answer.

25 MR. SILVERMAN: I am content to have Mr. Zulack

use it his way so long as Mr. Riklis uses it correctly.

THE COURT: I would like somehow to get a resolution here so we can go on to the next subject matter.

MR. ZULACK: Your Honor, I am just going to refer to certain undisputed facts which set forth the -- in the footnotes the treatment of excess costs over book value.

THE COURT: Let's do that at some other time. I appreciate why you are asking him the question because you want to --

MR. ZULACK: I am not going to continue with the line of questioning. I would like to make my reservation that after Mr. Riklis leaves, we can get some documents into evidence which are related to that.

THE COURT: Go ahead.

Q Mr. Riklis, I'm going to read a statement which has been excerpted from the October 6, 1972 proxy statement of Glen Alden, page 25, and ask you whether or not it was your opinion as a member of Glen Alden and Rapid Management.

MR. SILVERMAN: I object to this.

THE COURT: What is the statement?

MR. ZULACK: The relevant portion of the statement is, in the opinion of respective managements of Glen Alden and Rapid, such excess costs are similar in nature to intangibles which have not declined in value since acquisition of

the related equities.

Then there is a reference to a footnote which discusses the Schenley purchase price and the intangibles connected with that purchase price.

THE COURT: Then your question is what?

Q My question is, was it your opinion as a member of Glen Alden's management and Rapid's management that the intangibles allocated to the Schenley purchase had not declined in value since 1968?

A I think my opinion as management is that nothing has happened in any catastrophic way to take anything away from the value assigned to the intangible of the company by the auditors. It is more or less an accounting function that puts out these intangibles because of certain changes in rules of mergers and acquisitions in the past few years and it is the management function to inform the auditors, the firm of auditors if anything has happened in the corporation, a major fire, a -- I don't know, an airplane with all the executivies dying at one time which might affect the affairs of the company, whether any such major catastrophe has happened to have a future effect on the business of the company.

Q Do you regard the term "intangibles" as being strictly an accounting term?

A I am sorry. I have no feeling on that.

Q When you purchased Schenley, did you know that intangibles in the accounting sense were going to be created?

A Yes.

Q What did those intangibles represent in your mind at that time?

A They don't represent in my mind. They represent a form that has to take place when you pay for a company more than what the tangible net worth of the company is. Intangible are created.

Q Was the fact that you were paying more related in any way to your ideas of the future earnings of Schenley?

A I think --

THE COURT: When you say "tangibles," you are talking about something like book value, that type of thing?

THE WITNESS: Yes, sir.

THE COURT: You say when you buy over book value, the excess is intangible?

THE WITNESS: Exactly, sir.

THE COURT: What you are saying here is that as far as you know, the accounting practices carried that at cost?

THE WITNESS: That's correct.

THE COURT: Unless there is something major that

1 happened that grabs you by the scruff of the neck and says,
2 hey, we have to change it.
3 THE WITNESS: We are required every year to
4 advise the auditors if any such event has happened.
5 THE COURT: Up to that point you are entitled under
6 accounting practices as you understand it to carry it at your
7 original cost?
8 THE WITNESS: That is correct, sir.
9 Q My question, Mr. Riklis, is when you purchase a
10 company, you know you are paying over book value, you know
11 the accountants are going to put that difference on the
12 books as intangibles but in your own mind is that related to
13 something specific such as future earnings, such as how
14 Schenley and Glen Alden might knit together, what you can add
15 to Schenley from your management experience?
16 A I am trying to help you in formulating the ques-
17 tion. The only trouble is that I am not an accountant and an
18 intangible here in a merger could be ascribed to a value of
19 a franchise. It could be ascribed to a lease on a store
20 location. It could be ascribed to any of these. It is not
21 to potential earnings.
22 Now, the only thing is if potential earnings have
23 been endangered in any way by a major catastrophe as we have
24 discussed here, then it is our duty to advise the auditors who
25

may at that moment decide that we have to write off the intangible or that we have to write off an asset which is on the books in the form of a plant or machinery or something of that kind. Or that we may have to write off a reserve for future leases on a store for the next ten years because we are closing the store and we are stuck with the lease. These are the way they are performed but it is the -- the original intangible is not given any valuation based on earnings.

Q I am not asking for an accountant's opinion, Mr. Riklis. I am asking for your own. In your own mind when you purchase a company for over book value, is the price you pay, is the intangible related to your idea of the future earnings of the company?

A I would pay for a company a price that I felt has considered everything. Has considered the book value. It has considered potential earnings. It has considered the value of a name. It has considered a whole host of things. Good management, bad management, etc.

Q Would you consider the potential for generating cash as one of the things?

A Could be.

Q When was the first time that there was an announcement to the public that the Schenley minority shareholders might be eliminated in a future Glen Alden-Schenley merger?

A You want to help me?

Q Yes. The tender offer prospectus of 1968 stated that the shareholders who did not accept the tender offer ought to be warned that there would be, might be a possibility of future tender offer in which they would be eliminated. Then in 1969 --

MR. SILVERMAN: I'm sorry, that's a pretty free description of the language.

MR. ZULACK: I will read it. I will read it. It reads on page 7 of the 1968 prospectus, which is marked as Exhibit 3, on the top of the page.

"After completion of the exchange offer Glen Alden may (subject to future conditions) make a further tender offer to the remaining holders of Schenley common stock or propose to combine Glen Alden and Schenley. In connection with any such further tender offer or combination, the consideration to be received by the holders of Schenley common stock who have not accepted the exchange offermay be more than, less than or the same as that provided in the exchange offer."

Q Is it your recollection that that was the first time that potential minority shareholders were informed they might be eliminated in a future transaction?

MR. SILVERMAN: If your Honor please, the characterization is objectionable. Not that they might be

eliminated but that there might be a tender offer or a merger at which they would receive more than, the same as or less than.

THE COURT: Objection sustained.

Q Do you know if a statement considering a future merger of Schenley and Glen Alden was contained in the 1969 prospectus -- proxy statement of Schenley which was dated November 17, 1969?

A It is very possible.

Q I refer to, simply refer to a similar statement on page 25 which I will read as follows:

"Glen Alden currently owns approximately 88 percent of the outstanding Schenley common stock. Schenley has been advised that with a view towards simplifying the present corporate structure of Glen Alden and its subsidiaries the management of Glen Alden has under consideration the possible future merger or consolidation of Schenley in Glen Alden. No decision has yet been made as to whether or when any such merger or consolidation be proposed --"

MR. SILVERMAN: "Might be proposed."

Q "-- might be proposed or as to the form or terms of such transaction."

A This is May?

Q This is November of 1969.

A November '69 in connection with what?

Q In connection with the Buckingham-Schenley merger.

MR. ZULACK: Your Honor, I would like to offer the proxy statement of that transaction into evidence. It was marked for identification as Exhibit 2. I don't believe there is an objection to it.

MR. SILVERMAN: We have no objection.

THE COURT: It will be received.

Q Was a similar announcement made in the 1970 Schenley proxy statement, if you know, in connection with the election of directors?

A I do not know.

MR. ZULACK: May I offer it, your Honor, for that purpose.

MR. SILVERMAN: If you will represent it, we will accept your representation.

MR. ZULACK: It is Exhibit 3-A for identification. Excuse me, 2-A. No, it is not. Well, we will clear that up.

xx (Plaintiffs' Exhibit 2 received in evidence.)

Q When did the possibility that there would be a merger first come into reality, when did you first decide that Schenley and Glen Alden would merge?

A Well, the intention originally when the offer was made to all shareholders was the hope that all shareholders

will accept it. And that in effect it will create a complete acquisition. Once it was accepted by 88 percent, then such a possibility existed from that moment on, as it does exist between any parent and subsidiary of this kind of a relationship and I think that having read these various proxies and the statements in them, it just continues to therefore exist all the time. From time to time there will be a question you will be asked by the financial institutions, it will be a question you will be asked by the banks, it will be a question you will be asked by the authorities. It will be a question you will be asked by the directors. It will be a question that you will be asked by the employees. It is constantly on the table.

Q The merger terms were announced on February 25; is that correct? There is an undisputed fact to that effect.

A I will not dispute it.

MR. SILVERMAN: The year is --

MR. ZULACK: 1971. Thank you.

Q There is also an indisputed fact that you -- that Mr. Becker testified that you and he met on February 24, 1971 to fix the terms of the merger. Is that your recollection, that you and he met on the day before the announcement?

MR. SILVERMAN: Would you point us to the undisputed fact?

MR. ZULACK: Undisputed fact 5 or 6. 5 is that Mr. Becker so testified --

MR. SILVERMAN: Testified what.

MR. ZULACK: Testified that without prior discussion between the other directors of Glen Alden and before any written studies were made of the proposed merger, he and defendant Riklis on February 24, 1971 recommended the terms of a proposed merger to the members of the executive committee of Glen Alden who approved the same. According to its minutes, the meeting was comprised of four directors of which three were defendants Riklis, Becker and Johnston.

MR. SILVERMAN: If your Honor please, I do not understand that to mean that for the first time on February 24 Mr. Riklis and Mr. Becker got together to discuss the merger terms. It doesn't say that.

Q When was the first time that you and Mr. Becker got together to discuss the merger?

A Within a week, ten days, three days. I can't recall. I don't remember exactly but within a short period before that.

Q Do you remember whether or not it was the day before?

A No, it was not the day before because we have asked to see some -- to have some information brought to us

2 which we had to consider. So it would have to be a few days,
3 a week, ten days.
4 Q What was it about -- was there anything in
5 particular in January, February of 1971 which brought forth
6 the possibility of a merger more strongly than it was before?
7 A Well, you have mentioned the fact that ever
8 since 1969 there has been a basic majority change in the
9 philosophy of our company. There has been a very major change
10 in the philosophy in the marketplace and I refer to a market-
11 place, I refer to the attitude of the banks to its conglomer-
12 ates, the attitudes of the investing public to its conglomer-
13 ate, the attitude to the financial institutions and the
14 investment banking houses to its relationship with companies
15 that are interrelated with each other and the whole picture
16 of one company owning another company which has an interest
17 in another company has brought about a change in philosophy
18 of our company.
19 Q What was the change in philosophy?
20 A The change in basic philosophy was that we have
21 accepted the basic premise that it is complicated, that we
22 should try to simplify it as much as possible as we went
23 along and have taken the steps accordingly, one of which was
24 the merger of Buckingham with Schenley and at the moment --
25 about the middle of 1970 we have lost our appeal with the

government antitrust on the application to keep Cutty Sark and we have been given some time to dispose of it and we went about to -- looking for the disposition of that. There was no way that we could go ahead and make a merger where we could see the -- what kind of approach to that merger we should have without a disposition of the Buckingham question. I think probably Mr. Silverman was involved in it at the time and I believe it was around the middle of 1970 that we were told by the government that we are not going to be allowed to keep Cutty Sark and we then began to look for a customer and eventually we signed a memorandum of agreement with Northwest Industries.

However, that memorandum is exactly what it was, it was a memorandum of agreement. It was an agreement to agree possibly and a lot of questions had to be resolved. I believe they had to get permission from the Justice Department to buy because once we have agreed to a consent decree and I don't exactly remember whether we have actually signed a consent decree or we have agreed in a conference to a consent decree. The prior had to be approved by the Justice Department or maybe they had themselves some sort of a Justice Department problem. All I know is it had to take some time and I think sometime in January, February the actual sale we knew is going to be consummated because we

have gone over the things that were standing in the way.

Q Do you know, Mr. Riklis, if the terms of the merger were announced to the public prior to the time that the Buckingham sale became definite?

A It may have become definite, the actual transfer of money may have become definite but it was announced to the public, yes.

Q It was announced to the public, correct me if I am wrong, in October 1970, we didn't know you said whether it was going to go on or not --

A As soon as the deal was made with Northwest Industries it was announced.

Q But that was just a possibility?

A Yes, it was a possibility and the more we worked on it, the more that possibility became a probability. There has been no change in the -- in that actually between the possibility and the actual finishing of the deal.

Q Did the probability become a -- did the possibility become a probability after the Justice Department gave its okay that you could go ahead with the sale?

A I can't recall exactly the dates. I'm trying to give you only the generalities. You know, you are taxing my memory as it is on both hindsight and what happened then. It was about that time when we knew what's going to happen to

Buckingham that we could sit down and do the next step, which would be the merger of Glen Alden and Schenley.

Q So the first step in your change of philosophy --

A In my what?

Q When you talk about the change in philosophy in the marketplace towards conglomerates and that brought forth a different type of a program, a change of philosophy in the company, was the first step in the change of that philosophy this 1969 merger of Buckingham and Schenley?

A I would say yes.

Q Then the second step was arranging for the sale of Buckingham to a purchaser who happened to be Northwest Industries?

MR. SILVERMAN: Excuse me, your Honor, that was not the testimony.

THE COURT: Sustained.

Is this a good point to stop for our afternoon recess?

MR. ZULACK: It would be.

THE COURT: All right.

(Recess)

Q When we left off, Mr. Riklis, was it -- did you say that you had to make a determination of what was going to happen to Buckingham before the Schenley-Glen Alden merger

could take place?

A Yes. Sometime in February when it was obvious that this thing is going on and be completed, we have Mr. -- Mr. Becker and I sat together for the terms of the merger of Schenley and Glen Alden.

Q By that time in February had you determined for sure that the Buckingham transaction was going to go through?

A Yes.

Q By that time had the proposed consent decree been sent to the Justice Department for its approval?

A I can't recall exactly the dates but my impression offhand is that by then we have had the thing set to be completed. The transactions, I mean, of the sale of Buckingham.

Q Were there any other factors besides the sale of Buckingham which had to do with the timing of the merger, and generally speaking, was there a credit crunch in 1969 and 1970 which brought forth the merger of Schenley a little more strongly than it would have had there not been a credit crunch?

A I think that the -- I tried to allude to that before that the whole change in the entire marketplace changed with the credit crunch that was in 1969.

Q Is that when this credit crunch began?

A More or less, yes. Right after the election of 1968.

Q When did the credit crunch end?

A I do not know when it ends in the sense of ending, but it changed the entire philosophy in the market and it changed our philosophy at the end of 1969, beginning of 1969, end of '69.

Q Would you define the credit crunch for me, what it meant?

MR. SILVERMAN: If your Honor please, my friend uses the word and then asks the witness to define it.

THE COURT: I would appreciate somebody defining it. Overruled.

MR. ZULACK: It is a word I first heard from Mr. Riklis.

A Well, I would not attempt to define it because economists might find something wrong with my definition, but what we do know as a credit crunch in the management of the company is that money has become much more difficult to get and that the entire philosophy and investment philosophy in the market has changed, and as a result the companies in general find their activities are a little bit more curtailed as far as investments in new product, new facilities, so on, so forth.

Q Were interest rates high in that period, higher than they had been before and higher than they had been after?

A I think interest rates follow -- higher interest rates follow as a result of a credit crunch, yes.

Q Mr. Riklis, I am going to show you a page from the Federal Reserve Monthly Chartbook which is entitled, "Bank Rates on Short-term Loans," and it sets forth the prime rate of major banks from 1966 through 1973, and ask you if the chart shows the rise and fall of interest rates in 1969 and 1970 in a generally accurate way?

MR. SILVERMAN: If your Honor please, I object. The document speaks for itself. Mr. Riklis is a fact witness. It will be helpful if we could move this case along. He is not an expert for my friend.

THE COURT: I agree with you more than I disagree with you on this. Let's just see quickly if we can get an answer.

Mr. Riklis, does that chart mean anything to you?

THE WITNESS: Your Honor, it means that the prime rate went up in 1969 and continued to go down from the high at the end of '69 to the low of middle '71. It reached sort of a peak at the end of '69. Kept going high in '69 and down in '70.

THE COURT: Does that chart accord with your

memory of the times as to the situation?

THE WITNESS: Yes.

MR. ZULACK: I would like to mark that page in evidence.

THE COURT: No objection?

MR. SILVERMAN: No objection.

THE COURT: It will be received.

xx (Plaintiffs' Exhibit 73, Plaintiffs' 26, received in evidence.)

THE WITNESS: It is the top chart on the left side.

Q I'm also going to show you one more chart which relates to the --

THE COURT: I think your adversaries will stipulate with you that the chart go in.

MR. SILVERMAN: Yes, your Honor.

MR. ZULACK: The chart sets forth the amount of loans. That's on page 20-A entitled, "Large commercial banks in lending cities." It sets forth the amount of commercial loans.

MR. SILVERMAN: I would like to reserve objection on relevancy, if your Honor please, but for whatever it may be worth --

THE COURT: For whatever it may be worth it is

received.

Q You referred to a change in the views of banks towards conglomerates. Did you have any discussions with your lending institutions which related to the future of Glen Alden in particular? And Rapid-American?

A I think it related to the total pictures of Rapid-American, Glen Alden, Schenley, Lerner, McCrory. It basically related to the fact that sometime in early 1969, middle 1969 when this occurred, that the stock market went down. That the lending institutions were going to be a little leery of the interrelationship of companies with the discussions with the governmental authorities about the complicated structure that we have, that we have changed our philosophy. The idols of yesteryears had fallen, in a sense.

Q What do you mean, what were the ideas of yesteryears. Briefly that was the policy of acquisition --

A The years between 1965 and 1969 were the heydays of acquisitions. Acquisitions, bids, counter-bids, mergers, tender offers, so on, so forth. I think that they were quite exciting in a way in the sense that a lot of new things occurred in the market and it was sort of a runaway market with new issues and the multiples had been very high. As a matter of fact, we were caught towards the end of it --

THE COURT: Mr. Riklis, I hate to cut you off

because this is interesting but I do not think it is really addressing itself strictly to this answer.

THE WITNESS: It is addressing the question of change in philosophy, your Honor.

THE COURT: I think we understand the earlier philosophy of acquisitions and that philosophy changed to one of mergers and unifications, correct?

THE WITNESS: That is correct.

Q Were banks, were Glen Alden's banks pressing for the payment of debt during 1969 and 1970?

A I don't recall anybody pressing for payments of debts. Although I do recall institutions asking to limit the expansion of the use of money in mergers and acquisitions. That was a philosophy. I think it even came from the Federal Reserve to the bank.

Q Did any of your lending institutions suggest to you that perhaps Buckingham and Schenley and Glen Alden should consolidate?

A I will not define it as one or two or five of our financial institutions and we deal with a hundred of them, made a specific suggestion. I did indicate and I don't want to go into it any further, the fact that there have been discussions in total with our financial institutions, with our investment bankers, with our stockholders, with the

governmental agencies that we were dealing with that we are a complicated setup. The decision to change the philosophy was ours.

Q Did the suggestion go to --

MR. ZULACK: Strike that.

Q Did anyone suggest that instead of Glen Alden owning securities in Schenley, that they would prefer to lend money to a Glen Alden which owned the assets, which owned a hundred percent of the stock of Schenley?

A I don't.

MR. LEVIN: I object, if your Honor please. I don't know the relevance of this.

THE COURT: I am a little puzzled myself. I thought I saw some relevance to the earlier questions. How does this bear on our issues?

MR. ZULACK: It bears on a number of ways. If I might, I would like to pursue the line of questioning. First it bears on what the purpose of the merger was and was the purpose of the merger disclosed.

Second, it bears on what was the ultimate purpose of this particular transaction. Was it one transaction isolated or was it part of a transaction which had an understood objective, which objective would relate to whether or not a shareholder would want to vote for this merger. And it

has to do with whether or not a bank would be willing to lend money to Glen Alden if --

THE COURT: Could I suggest that you start with exhausting his recollection as to why the merger took place and then if you have something to add to it or contradict it, you go into that. Let's go at this situation.

Q Were there any other reasons why the merger took place?

A Any other reasons than what?

Q Well, any other reasons besides --

THE COURT: Mr. Riklis, let me put a question. Why did this merger take place?

THE WITNESS: It was a continuation of the philosophy and change in program to continue and finish the consolidation of the entire company.

Q What was the objective of the consolidation?

A The objective of the consolidation was the consolidation of a parent that owned 88 percent of a subsidiary into 100 percent of a subsidiary.

Q Was it the purpose to reduce the number of shares outstanding in the public and thereby increase the earnings of any of the holding companies?

A Possibly. It's one of the results that could occur. If your earnings go up if you pay for the stock,

depending what you pay, if you pay them in stock, if you pay in bonds, there is a change in the dilution, no dilution.

Q When you talk about consolidation, did you contemplate consolidation under Rapid-American?

A Eventually, yes.

Q Did you contemplate increasing the earnings per share of Rapid-American?

A That has always been my contemplation.

Q How much money did Schenley transfer to Glen Alden in the merger of 1971, if you know?

A Do you want to refresh --

Q Approximately $81 million?

A Possibly.

Q Could Glen Alden have paid its debts as they became due in 1971 if it didn't have the $81 million from Schenley?

A Paid its debts or continued to finance its debts?

Q Well, could it have paid its debts first?

A You see, a debt becomes due and if you ask did Glen Alden have the cash to cover every debt that was coming due from the banks' point of view, the answer is no. But that's not the way things are done. To pay its debts you pay it back sometimes with a new loan. You refinance the loan.

Q Could Glen Alden have obtained refinancing in 1971 if it didn't have the $81 million from Schenley?

A Glen Alden had no problem refinancing any of its debts in 1971.

Q Did the fact that it had no problem refinancing any debts relate in any way to the fact that it had gotten $81 million from Schenley?

A I don't understand that.

Q I'm saying, if the $81 million were left in Schenley and there were no merger, could Glen Alden have refinanced its debts?

A I'm convinced yes.

Q Did Glen Alden make a tender offer of its own shares in 1971?

A Do you want to help me?

Q Yes. On October 8, 1971 did Glen Alden make a tender offer for four million shares at $11 a share?

A I accept it if it is an undisputed fact.

Q It is not. It is not and, therefore, I would like --

A We can make a tender --

MR. SILVERMAN: May I object on the grounds of relevance. We are now past the merger.

MR. ZULACK: I would like to offer the Glen Alden

tender offer statement.

THE COURT: Mr. Silverman made a special request. What is the relevance?

MR. ZULACK: The relevance, your Honor, is whether or not this consolidation could have taken place if Glen Alden had not gotten the $81 million from Schenley. Whether it could have purchased its shares in the open market and whether this was, in fact, a purpose of the merger.

THE COURT: Do you have any proof that you are going to be able to adduce or suggest that this was in anybody's mind prior to the merger? I mean, just because they happen to have the money and then make a tender offer doesn't necessarily make that the purpose of the merger, or a purpose.

MR. ZULACK: I have proof that is convincing to me. I can't say it would be convincing to my opponents. But may we take it subject to connection, your Honor?

THE COURT: Any reason why you can't tell me? Is this documentary proof?

MR. ZULACK: There is some documentary proof. There is proof that Glen Alden extended the due dates on some of its loans until after the merger date, and that these loans were -- they had been extended on a number of occasions, and the loans were paid from the proceeds of the merger.

THE COURT: It's not at all surprising to me about what they say about the use of funds going upstream.

MR. ZULACK: Absolutely, your Honor.

THE COURT: Go ahead.

MR. ZULACK: And that there was also in 19- -- early 1971, there was a plan pursuant to which Glen Alden would borrow approximately $60 million to pay off these

1 2 jpmch Riklis-direct

2 particular loans and that that loan was never made.

3 Finally, when there was a financing to pay

4 off -- to finance the tender offer purchase, one of the loan

5 agreements which was paid off was the loan agreement

6 with John Hancock, and that had detachable warrants on it.

7 I apologize if I am confusing you.

8 The proof would be that in February it was quite

9 clear that it would have been impossible to pay off all

10 these loans and to finance this tender offer unless they

11 had the money from Schenley.

12 THE COURT: You are looking at what they did

13 later and saying they couldn't have done it if they hadn't

14 had the money.

15 MR. ZULACK: I am saying that, and I think the

16 inference is quite clear that if there was a consolidation

17 program, it was begun in 1969. The money coming from

18 Buckingham was very important to finance the next step in

19 the consolidation program.

20 THE COURT: At this stage of the trial, I will

21 take the exhibit.

22 MR. ZULACK: It's Exhibit 99.

23 (Plaintiffs' Exhibit No. 99 was received in

24 evidence.)

25 Q Mr. Riklis, I show you a copy of the tender offer

prospectus which shows that 4 million shares were purchased at $11 a share.

Now, did Glen Alden obtain financing to accomplish that tender offer?

A I believe so.

Q And was that financing in a loan agreement dated the same date, October 8, 1971?

A You want to read it to me from someplace? see Page 4-H.

Q I am showing you a copy of the loan agreement.

A Well, I think this really gives the essence of the loan agreement.

Q How much was paid out in the tender offer?

A How much was that?

Q How much was paid out in the tender offer?

A I can't remember, but I am sure that somebody will be able to --

Q In the approximately $44 million?

A If all shares were in the tender, yes. I don't remember if all shares were tendered or not.

Q Do you know how much the loan was for on October 8, 1971? Was it for $75 million?

A I'll read to you from Page 4, No. H. The funds to be used by Glen Alden to effect the purchase of

Q Did Glen Alden borrow $133 million from certain banks in November of 1968?

A You will have to refresh my memory, I'm sorry.

Q I show you a copy of a loan agreement dated November 15, 1968, as Exhibit 79, and ask if that refreshes your recollection.

A November 15, 1968, there is a loan agreement for $133 million.

Q And would you accept my representation that a portion of this loan agreement was used to pay the ntes which GlenAlden made in connection with the acquisition of Schenley?

A Very possible.

MR. ZULACK: Your Honor, I offer this exhibit in evidence, which is a copy of the loan agreement.

MR. MANNING: What number is that?

MR. ZULACK: 79.

MR. SILVERMAN: Your Honor, I would object again on the grounds of the relevance. If your Honor will take it for what it's worth, I would --

THE COURT: I will take it.

(Plaintiffs' Exhibit 79 is received in evidence.)

Q Mr. Riklis, there is an undisputed fact that $53 million of this agreement was due as of June 1970 and

tendered shares will be made available from borrowings from a group of banks under a loan agreement for an aggregate amount of $75 million. Of this sum $30 million will be used to prepay in full at 7-1/4 senior note in that amount held by John Hancock Mutual Life Insurance Company, and $45 million will be available for use in connection with the tender offer.

Upon payment of such note, warrants held by John Hancock to purchase 700,000 shares of common stock at $14.92 per shares will be cancelled.

Assuming the purchase by Glen Alden of 4 million shares of common stock, the total purchase price before commissions and expenses will be $44 million. The lending banks under a $50 million bank credit agreement dated July 26, 1968 and John Hancock have waived provisions in their respective agreements with Glen Alden that would prohibit this offer.

THE COURT: You have a question pending now.

MR. ZULACK: I think Mr. Riklis' reading of that particular provision answered the question, your Honor.

Q Now, these banks which lent the money on October 8, 1971, is it true that Glen Alden had outstanding debts to those banks prior to this loan agreement in 1971?

A Very possibly.

that amount was not paid; is that correct?

A Yes.

Q And that due date was extended to February 1, 1971.

Do you know if the $53 million was paid on February 1, 1971?

A I don't know, but you ought to understand that --

THE COURT: Your answer is you don't know. Next question.

Q Do you know if the balance of $22 million -- do you know if the Glen Alden board of directors sent a certified resolution to the John Hancock Insurance Company that it was unable to pay the full $53 million due on February 1, 1971 to the banks?

A I think that every time you have to borrow on a loan, you have to send a resolution of that kind.

Q You have to send a resolution saying you are not in the position to make the payment of the amount that is due?

A If you have notes due from banks and you want to roll over the notes, you have to send over such an announcement of such advice to the insurance company. It would be very normal.

MR. ZULACK: Your Honor, I would like to also

introduce that resolution from the board of directors of Glen Alden.

THE COURT: Do you have it?

MR. ZULACK: I do have it, your Honor.

Exhibit 59.

THE COURT: Any objection other than relevance?

MR. SILVERMAN: Other than relevance.

THE COURT: Received.

xx (Plaintiffs' Exhibit No. 59 was received in evidence.)

MR. ZULACK: It says, "Whereas to the note and warrant purchase agreement dated January 31, 1969, as amended."

MR. SILVERMAN: You go too quickly.

"Whereas pursuant."

MR. ZULACK: "Whereas pursuant to the note and and warrant --"

THE COURT: Why can't I just read it without adding pages to the record?

MR. LEVIN: May I show the exhibit to the witness, your Honor?

THE COURT: Yes. All right, go ahead.

Q Mr. Riklis, do you know whether or not these same banks which financed the Glen Alden tender offer lent

approximately $20 million to Glen Alden in short-term notes on or about May -- in 1970?

A Would you please read that question again?

THE COURT: Do you want the question read back?

(Question read)

Q I refer you to Page 5 of the resolution.

MR. SILVERMAN: It's an undisputed fact, your Honor.

MR. ZULACK: I don't believe this is an undisputed fact.

MR. SILVERMAN: It's undisputed fact No. 27.

MR. ZULACK: It is, your Honor, and I apologize. Thank you, Mr. Silverman.

THE COURT: Are you aware of that fact?

Q Yes, were you aware of that fact?

A I must have been.

Q What did Glen Alden do with the $81 million it received from Schenley?

A I don't know.

I mean it added it to its cash position.

Q It paid off this $20 million loan, didn't it?

A Very possibly.

MR. LEVIN: I think the record is being confused now. There is no proof that $80 million went up to

Glen Alden. I think of the 80, 20 went back to Schenley.

THE COURT: Do we have an argument over the amount?

MR. ZULACK: We do.

Q How much money was paid to Glen Alden by Schenley as a result of the merger?

MR. LEVIN: If the witness knows, let him answer.

MR. SILVERMAN: That fact is stipulated, your Honor. But there is no proof with respect to how much money -- or no stipulation with respect to how much money came back down.

THE COURT: In other words, $81 million that went and a certain amount went back as a reserve on the appraisal proceeding; is that it?

MR. SILVERMAN: For people who operated out of this and took the appraisal, they didn't get the debenture.

THE COURT: You set up the $20 million reserve.

MR. SILVERMAN: In fact, the money came down. It's just a mathematical computation.

Q Did Glen Alden ever consider paying cash to the Schenley shareholders for the total amount of the value of their shares?

A We considered it, but only very little. I mean, just as another discussion.

Q Did Glen Alden consider paying a dividend of the cash which had been accumulated from the sale of Buckingham and the transfer securities and the other things we talked about to all of the shareholders of Schenley?

A No.

Q Why not?

MR. SILVERMAN: Objection, your Honor.

THE COURT: Let me --

MR. SILVERMAN: Forgive me, your Honor.

My friend asked, "Why not?", and I withdraw the objection.

THE COURT: All right.

A I mean, why not? You have cash in the company and when you have cash in the company, that doesn't mean to say that you take the cash and pay it out in dividends. I mean, I don't know.

I have never heard of such a thing, but if you liquidate the company completely, you pay a liquidating dividend

Q Was Buckingham liquidated?

A As a division of Schenley, yes.

Q And what percentage of the assets of Buckingham -- what percentage of the assets of Schenley did Buckingham represent?

A About 4 percent.

Q 4 percent?

A Yes.

Q That is 4, not 4-oh, 4 percent?

A 4.0.

Q 14?

A 4.0, to the best of my recollection. I mean, Buckingham had about a $15 million net worth and Schenley had about a $320 million net worth, or thereabouts, give ot take a little. And 15 of that amount is about 4 percent, 5 percent.

Q What percentage is the $150 million cash which resulted from the sale of Buckingham and the transfer of securities?

A As a result of the sale of Buckingham, $120 million and not $150 million -- as a result of the merger with Buckingham, $30 million of cash of Buckingham mingled with Schenley's cash. But the result of the sale of the $15 million net worth, and I believe we guaranteed a $15 million net worth of Buckingham, the cash that came in was $120 million. Part of it was in notes, but I'll take the whole thing as if it were in cash.

Q Did you ever consider paying a dividend over $1.40 per share?

A No.

Q Was one of the reasons that the dividend wasn't considered because it might trigger conversion of the $1.40 preferred?

A Say that again.

Q Was one of the reasons that a dividend in excess of $1.40 per share was not considered was that it might have triggered conversion of the $1.40 preferred shares?

A I don't know what you are mixing $1.40 -- I don't remember what we used to pay in Schenley as a dividend, but we did not -- I don't think we paid $1.40.

Q I believe that --

A The preferred got a dividend of $1.40.

Q I believe the common -- will show it got a dividend of $1.40.

MR. LEVIN: If your Honor please, I don't know what is going on.

THE COURT: Let's put questions to the witness that are competent and have a foundation.

MR. ZULACK: Thank you, your Honor.

Q I show you a copy --

A I will concede, if you tell me that the dividend in Schenley was $1.40, it was $1.40. I said I do not recall what the dividend was.

Q Didyou ever consider -- did Schenley ever consider redeploying the money which it had accumulated, the cash which it had accumulated over the three prior years in some other business?

A Yes and no. I mean we have considered everything. I mean considered.

Q Well, what considerations did you have?

A We were thinking of what we were going to do with the money, whether we would go into another business in Schenley or whether we should merge Schenley and Glen Alden and go into another business with Glen Alden. We considered all these things.

Naturally, when you end up with this kind of money, you consider a lot of things.

Q Now, when was it that you and Mr. Becker again decided that Schenley and Glen Alden should merge?

A Well, you yourself quoted the merger of Schenley and Glen Alden was now in the discussion stage at various times beginning from 1968 when Schenley made a tender offer to all shareholders and when Schenley and Buckingham merged it became more obvious that eventually Schenley and Glen Alden will merge. And it was --

Q When did you fix the terms of the merger?

A The terms of the merger were fixed or outlined

to the executive committee and recommended in February of 1971.

Q Did you and Mr. Becker meet prior to the time that the executive committee met?

A Yes, we did.

MR. SILVERMAN: Haven't we been through this?

THE COURT: This has been asked and answered.

Q When was that?

A I said within a week, ten days or thereabouts of the executive committee meeting.

Q Where did that meeting take place?

A In our offices at 711 Fifth Avenue.

Q Was anyone present besides you and Mr. Becker?

A I don't believe so, and it's a very sensitive situation, and that's why once a recommendation was made to the executive committee we made sure that it's immediately and it's an open statement; in other words, an announcement is made.

Q And there is an undisputed fact that the executive committee met on February the 24th. When, again, when you say once the terms are fixed, you want to make sure that it's immediately communicated to the executive committee, what do you mean by "immediately"?

A I say once the executive committee -- as long as

Mr. Becker and I are discussing it, we know how many people know, or whether there could be any leaks.

But once you discuss it with three or two, or once there are people involved in an announcement of an executive committee or calling of the executive committee, speed is a very important element in order not to make this leak out and it may have an influence on the prices of stocks.

Q So I understand your testimony, Mr. Riklis, what was the time period between the time you and Mr. Becker fixed these terms and the time you met with your executive committee?

A Within days.

Q One or two days?

A It could be.

Q Did you preserve any notes of your meeting with Mr. Becker?

A Not that I recall. I don't know if any notes were found.

He must have asked for that before.

(Continued on next page)

Q How long was your meeting with Mr. Becker?

A The meetings with Mr. Becker and myself last from five minutes to three hours. I don't have any recollection how long this meeting would take. But it was in stages.

We have discussed it. We have thrown ideas to each other. We have gone out to think about them. We have come back to look at the prices of Schenley and for a certain length of time, we went back to look at them for a longer time.

We have gone out to calculate the amount of money that Buckingham was sold for and the number of shares of Buckingham and what it meant per share.

If your Honor will allow me, I will answer it a little bit more in full.

Q Please do.

A You have asked me before what were the considerations that Mr. Becker and I had given to the price and I've said that there were two major considerations.

One was the price of the stock for the past twelve months or eighteen months or two years. We sort of went back to look at what the price of the stock was over a period of time without the disturbance of any tender offers or competing bids, and then we talked about the

highest price and we put that as the first one.

Then we took the second consideration that whatever we give to the Buckingham shareholders, who are now receiving 9/10 of a share of Rapid, that it will not be less than the amount of money that the company received in the sale of Buckingham.

Q When you say that you went back and forth and looked at market prices, did this take place within this one particular meeting or did this take place every day?

MR. SILVERMAN: Your Honor, I have not heard that there was one particular meeting. He said there were meetings.

THE COURT: I heard there were a great number of meetings.

Q There were a great number of meetings?

A There were a number of them.

Q When was it decided what the exact terms were going to be?

A Well, I think that we have reached the conclusion together on the terms being about $29 to the shareholders of Schenley which was approximately the highest price of the last two years, taking into account the amount of trading on a daily basis on the highs and the lows, and the low was about twenty or twenty-one, something like that. The high was

about thirty or thirty-one, but the amount of trading at thirty and thirty-one was very low.

I would say about a day or two or three before an executive committee met, we finally reached the conclusion of the amount and the form.

Q Did you go back to February of 1969?

A My memory is that I asked for first-year trading in the stock and then Mr. Becker further looked into the past two years.

Q And the $29 was the highest price within what, the last year or the last two years?

A Approximately within the last -- to the best -- I know what remains in my mind was about the last year. But it could just as well have been within the last two years.

Q What price had the stock sold for in February of 1971?

MR. SILVERMAN: I think there is an undisputed fact about that, your Honor.

Q Did you look at the prices for the stock in February of 1971 on a daily basis?

A I looked at the prices of the stock for twelve months prior to and including February of 1971 on a daily basis.

Q Mr. Riklis, I show you a copy of a schedule

prepared by Mr. Vogelstein and given to us by your attorneys.

I ask you whether you accept that schedule as being an accurate statement of the prices in the market.

MR. SILVERMAN: If your Honor please, I will object to this.

I don't think that this is a market price unless he's getting to the fact that the stated reasons for the merger or the stated terms of the merger that they consider --

THE COURT: I am not quite clear as to just what the purpose of this particular inquiry is.

MR. ZULACK: The purpose, your Honor, is to show for the month of February the stock traded at thirty, thirty-one and twenty-nine was about its lowest trade.

MR. SILVERMAN: Your Honor, there is an undisputed fact to that point.

THE COURT: If that is undisputed --

MR. SILVERMAN: On page 23. It has the monthly high and low for each month from December of 1969 through February 1971.

MR. ZULACK: This, your Honor, shows the exhibit which Mr. Vogelstein prepared, it shows the high and low everyday in February and everyday in January.

THE COURT: Who is Mr. Vogelstein?

MR. ZULACK: Mr. Vogelstein is the expert of the defendants and they gave us the schedule which they say was prepared by their expert.

THE COURT: Any reason why we can't accept it?

MR. SILVERMAN: Except, your Honor, that that is done in connection with getting involved in this case in terms of whether it was fair, the market price.

I don't want to extend this case beyond the Securities Act aspect of it. Other than that, I have no objection.

MR. ZULACK: Your Honor, I can go out and get the market prices on a daily basis but I thought this would be a relatively good representation.

THE COURT: This piece of paper just purports to be stock prices. It has nothing to do with fair or unfair --

MR. SILVERMAN: Well, I don't understand the relevance of it.

THE COURT: He's exploring Mr.Riklis' recollection as to how he arrived at twenty-nine.

It can't quite have happened the way he says because it was over twenty-nine for substantial periods. I think that this is what the whole inquiry is about, more or less.

What is the next exhibit number for the plaintiff?

MR. ZULACK: Shall we mark it as 145 for identification?

THE COURT: This is 145 in evidence.

(Plaintiffs' Exhibit 145 received in evidence.)

Q Mr. Riklis, when you said thirty-one was the high over that period of time, were you looking at the closing prices or the high prices or the low prices?

A I was looking at the mean price.

Q The mean price.

Now, in February of 1971, how many days did the stock trade over twenty-nine?

A On the high or the low or middle?

THE COURT: The exhibit says how many. So if you want to say to him, doesn't this show that it sold at so-and-so on so-and-so many days, does that refresh your recollection of the price, or it didn't, then you got something.

THE WITNESS: Except one thing, I didn't say I arrived at a price based on the one month of February.

THE COURT: My recollection was that you said you arrived at that because it had been a realistic high. There were subsequent sales but there was sort of spotty trading on that occasion.

Q Was trading throughout the month of February light trading?

A I can't recall.

MR. SILVERMAN: Objection.

THE COURT: He just answered.

Q Does it refresh your recollection that the low price of the stock on the 2nd of February was 29-7/8, on the 3rd, it was 30-3/4 and on the 4th, it was 31-5/8, on the 5th, it was 30-5/8, on the 8th, it was 31 and on the 9th, it was 31-1/4 and that generally the prices throughout the month of February traded at the lows, one or two or more than two dollars above $29 per share?

MR. LEVIN: If your Honor please, I think we are right back to the proposition that the instrument will speak for itself.

A I have accepted what you showed me and I have no objection to that.

Q Did you ever consider --

THE COURT: Mr. Riklis, does that exhibit in any way refresh your recollection or change your recollection as to how you arrived at the $29 price?

THE WITNESS: No, your Honor. The price of $29 -- do I have to repeat how I --

THE COURT: No. That exhibit doesn't change that

recollection at all?

THE WITNESS: No.

Q How did you formulate the special standard for -- let me start again.

Was there a special standing for the Buckingham shares, the 1.40 shares?

A There were approximately 6 million shares of Buckingham outstanding of which Schenley owned at the time about three-million-two or three-million-four, in that neighborhood. I can't recall the exact number. It was about 55 percent of the number of shares of Buckingham outstanding.

Now, if we received $120 million on the sale -- and, again, I've given them, everybody the benefit of the doubt -- I am not taking anything for discount, for notes, for guarantee of five years.

What I mean, your Honor, is we have sold Buckingham with a guarantee of five years basic earnings of $20 million or $18 million pretax in that area. Otherwise, the price will be adjusted.

And assuming the full price of 120, it couldn't be over 120 and taking the thirty, thirty-one, thirty-two million dollars that came in cash from Buckingham into Schenley, you find that the total is somewhere over, a

little over $150 million.

If you take a little less than 6 million shares outstanding in Buckingham, the total amount it would have accrued to Schenley would have been $150 million, and then the number of shares outstanding would be somewhere between $25 and $26 per share.

When we looked at the high and the low over the last twelve months -- and I think Mr.Becker told me he looked further, and the price of 29 seemed more like the high price, not the highest but if you take the lowest and you re-raise and you take the highest and you re-raise, and you take the range, and the 29 was about the highest, and it was only thirty or sixty days after the announcement-- ninety days after the announcement of the Buckingham sale, you arrive at a price of 29, and if you take 10 percent less, it approximates 26, maybe a little less than 26 -- 25, 26, I don't know. It is in the neighborhood of $26.

And $26 is the most that the Buckingham shareholders would have received had the company been liquidated and the money delivered to the shareholders of Buckingham which, I may remind you, would have been impossible to do because of the way the transaction was. Because of the guarantee of the five years, you would have had to keep a certain amount of money in the escrow, and so

on and so forth.

Glen Alden and Schenley accepted the notes when the notes were discounted from Northwestern Industries. That was the consideration because you may recall that the shareholders of Buckingham did not have a chance to get the $53. That offer was made to all shareholders of Schenley. The merger of Buckingham and Schenley came later on.

I thought we wanted to be very careful to make sure that all Buckingham shareholders who did not have the offer of $53 to all shareholders when it was made, at least there be an attempt equivalent to the amount of money that was realized from the sale of Buckingham.

Q Do you refer to the standard for Buckingham as the liquidating value of Buckingham, is that a fair reference?

A If you explain what you say.

Q Is it a fair reference to consider this standard you apply to the Buckingham shareholders, the liquidating value of Buckingham?

THE COURT: You want to go on and use some language that he can understand. He explained very well what he did. I would prefer not to get into words of art if we don't have to.

Q Why didn't you apply the liquidating value or

liquidating standard to all the shareholders of Schenley, both common and preferred?

A I think we have applied the best standard that I know and I have been in this business for a long time, or at least long enough as if I'm 70 years old, in taking into consideration the market price over the past twelve months and the market price in itself takes everything into consideration.

And if I would say anything, I would say the market price was probably higher than normal because the number of shares outstanding was not that great, so that -- but we have looked at the market price for the last eighteen or twenty months or twenty-four months and I find that that market price, for me sitting at that moment trying to make a decision, you can come up with anything you want.

But there's got to be a base, and the market price is the only criteria that I know that has all the bases put together.

Q Did the market price reflect the sale of Buckingham?

A I think that the market price beyond October reflects the attitude of the people towards the company after the sale of Buckingham or with the knowledge of the sale of Buckingham. I was going to --

MR. ODELL: Your Honor, I don't want to interrupt at this point, but I was told you have an argument at five o'clock and we have quite a few papers to wrap up.

THE COURT: I was going to call a halt in about two or three minutes. We will recess until 10:15.

MR. ODELL: Could we make it 10:30, which I thought was our regular starting time.

THE COURT: Ten-thirty tomorrow morning.

(Court adjourned.)

THE COURT: All right.

M E S H U L A M R I K L I S , resumed.

DIRECT EXAMINATION CONTINUED

BY MR. ZULACK:

Q On May 31, 1971 did Schenley have any surplus cash in your opinion?

MR. SILVERMAN: Objection.

THE COURT: What --

MR. SILVERMAN: May I explain the basis, your Honor. The word "surplus" was not explained.

THE COURT: Let's get a foundation for the use. I thought it was a word that had a meaning to everybody.

Q Would you agree with me that the word "surplus cash and marketable securities" would be that cash and marketable securities which could be removed from Schenley without lowering the profits of its operating business?

A I don't know the answer to that.

THE COURT: Mr. Riklis, let's put it another way. Counsel is using a word "surplus." Does that word have a meaning in the financial world as he has defined it?

THE WITNESS: Not necessarily, your Honor.

THE COURT: What is the meaning of the word?

THE WITNESS: The word "surplus" the way we use it in our terminology would be money actually in the bank not

being used in any way in any of the operations of the company. The way he wants to define it is that we can take it out, not use it in the corporation and yet not hurt and not harm the earnings of the company. We do not use it that way. For example --

THE COURT: All right. But taking the word as he has defined it, were there monies of that kind that could be removed in May of 1971? Would you have an opinion as to whether there were such monies?

THE WITNESS: I believe the answer is no.

Q The answer is no.

Did the market price of the Schenley stock --

A Wait a minute.

Q Excuse me.

A Did he say the way he defined it or the way I defined it?

THE COURT: The way he defined it.

THE WITNESS: Let's redefine his definition because I feel the way I defined it we don't have surplus cash. The way he defined it, without hurting the earnings of the company, the answer is yes.

Q How much surplus cash did you have?

A I cannot recall offhand. I'll have to look back into the figures. You are talking about May 1971. Are you

talking about when we have already received the money from --

Q Buckingham.

A You are talking about a period where the Schenley loans within its own bank credit are about $100 million level with the earnings going down with the sale of Buckingham, that may have to be reduced by 30, $40 million. There is all kinds of calculations. I would say that if $120 million was the amount of money that came in that period without hurting the earnings of whatever is left, there is probably anywhere from 80 to $120 million in your definition of surplus cash.

Q Was it your testimony that the market price takes into account all considerations?

A My belief, yes.

Q Did the market price of the Schenley stock in February of 1971 take into account the cash which Schenley had generated under your management's cash generation program in the last three years?

A I don't see any reason why not.

Q Do you know whether it does or not, whether it did or not?

A No, sir. You are talking about when I discussed with you the market price, I discussed . it does include all these things but there is no man specifically on every corner yelling out, this is my point of view and then you make --

THE COURT: A composite.

A A composite of the whole thing and it comes out. It's all these things together. One analyst saying one thing, another saying another thing.

Q Did the February prices of the Schenley stock reflect the sale on the memorandum of understanding that Buckingham was to be sold for --

MR. LEVIN: Objection. I don't know how this witness can be --

THE COURT: Yes, I sustain it.

Q Do you know if the prices went up on the announcement of the Buckingham memorandum of understanding with Northwest Industries?

A I have no recollection. I mean, I may have known at the time.

Q Do you know if the market price of the Schenley stock in 19 -- in February of 1971 reflected the increase in earnings of 1970 over the annual year 1969?

MR. LEVIN: Objection.

THE COURT: Sustained. I take it the most he can say is that those facts were known in the marketplace.

Q Were the 1970 earnings announced in the marketplace prior to the time that the merger was announced?

A The nine months.

Q When was the annual, the year end 1970, announced?

A We were a December 31 in Schenley, I believe. It would be 90 days beyond that and it will be sometime in the first week or so in April.

Q If I gave you a copy of the announcement which was released to the press by Schenley of its 1970 earnings, would that refresh your recollection?

A It would not refresh my recollection because I was not involved in the release.

Q Did you and Mr. Becker during your discussions of fixing the terms of the merger, did you and Mr. Becker ever discuss the timing of the announcement of the 1970 earnings of Schenley?

A The timing -- let's understand one thing now, Mr. Zulack. The timing of the earnings to be announced, there is no discussion of it. The moment you have it, it is the moment you announce it. You are talking about audited figures?

Q Audited figures.

A And audited figures, the moment the accountants give you the audited figures, at that moment you announce it. Maybe it is within a day because you may hold a board meeting to approve it or something of that kind, but I don't even think that that is a usual procedure. We usually time the

2 board meetings to the time when the auditors tell us that
3 they will give us the statement.
4 Q Are earnings announced to the public in a public
5 press announcement prior to the announcement of audited
6 figures?
7 A I beg your pardon.
8 Q Are earnings announced to the public via a press
9 release before the time that you have the audited figures?
10 A You may have occasion to use a statement, but it
11 is not announced publicly as an announcement of earnings
12 until the audited figures have been given on a year-end
13 basis. On a three, six and nine months, management announces
14 an estimate of earnings for these periods.
15 MR. ZULACK: Your Honor, with your permission
16 rather than take up the witness' time, the earnings were
17 announced the same day that the merger was announced. I want
18 to be allowed to deduce that fact.
19 A The earnings were --
20 Q The earnings were announced on February 25. Would
21 it refresh your recollection if I told you that the earnings
22 were announced on February 25, the same day the terms of the
23 merger were announced?
24 A It would not except you are only helping me in
25 the fact that the moment we had the earnings, we announced it

together with the merger so there will be no ifs, ands and buts. I can't recall --

Q Were 1970 earnings higher than 1969 earnings?

A I can't recall. If you will show me the statement, I will be more than happy.

Q In the proxy statement -- I'll show you a copy of the proxy statement.

THE COURT: Are you attempting to establish that fact or are you going to go on to something?

MR. ZULACK: May we establish the fact that 1970 earnings were higher than 1969 earnings?

A Is it an undisputed fact?

MR. SILVERMAN: Your Honor, the document will be in evidence and it speaks for itself.

THE COURT: I take it it shows what?

MR. ZULACK: It shows that earnings of 1970 were higher than earnings of 1969.

THE COURT: All right.

Q Does the market based on your knowledge, does the market of a stock usually rise in response to announcement of increased earnings over the prior year?

MR. SILVERMAN: Objection.

A Will it help, your Honor --

THE COURT: Do you want to get an expert opinion

as to whether investors are impressed by an increase in earnings? I suppose the answer is you don't need an expert. The answer is probably yes; is that right?

THE WITNESS: Not necessarily, your Honor.

THE COURT: In a vacuum?

THE WITNESS: We have seen the opposite.

THE COURT: In a vacuum, isn't that so?

MR. SILVERMAN: I object to the question because it was as theoretical as my friend put it. If he wants to know something about the impact of earnings on this company --

THE WITNESS: Let me answer that, Mr. Silverman.

THE COURT: Let's get a question here.

Q Did you and Mr. Becker discuss the timing of the announcement of the merger as related to the timing of the announcement of the earnings of Schenley of 1970?

A I don't recall but I am sure if earnings were as close to being available to us, we would want to announce the earnings immediately as we announced the merger.

Q Mr. Riklis, yesterday I read from a portion of Forbes' article in which you said that you expected Buckingham's earnings -- Schenley's earnings without Buckingham to be as high as the earnings were -- that Schenley had when Buckingham was part of its company in 1968.

A That's very true.

2 Q When was that interview given, to your knowledge,
3 with the Forbes reporter?
4 A I don't know. Will you help me?
5 Q The date of the article was March 14, 1971.
6 A It must have been four, five weeks prior to that.
7 Three weeks prior to that.
8 Q Do you remember having any other discussions with
9 members of the financial press about Schenley's anticipated
10 earnings for 1971?
11 A I don't know.
12 Q I read you a quotation from -- attributed to you
13 in an article appearing in the Wall Street Journal on March
14 23, 1971 by Dan Dorfman entitled, "Here on the Street."
15 First I will show you the article and ask you if you have
16 ever seen the article? I want to know if you are familiar
17 with the article.
18 A I must have been familiar with it at the time
19 but I don't remember.
20 MR. LEVIN: If your Honor please, I think Mr.
21 Zulack in making a representation to Mr. Riklis stated that
22 the article was, the Forbes article was dated March 15?
23 MR. ZULACK: I believe I said that. There is an
24 undisputed fact --
25 MR. LEVIN: March 23, 1971.

2 MR. ZULACK: Thank you very much.

3 Q This is the same day as the Wall Street Journal

4 article in which Mr. Dorfman quotes you as saying: "Mr.

5 Riklis said he expects Glen Alden to earn about $27 million

6 from operations this year. He said its Schenley, Playtex

7 and BVD's divisions are all doing well and should do 'much

8 better' in 1971 than last year."

9 Do you remember having a discussion with Mr.

10 Dorfman in which you talked about Schenley's anticipated

11 earnings in 1971?

12 A I don't but I don't deny it. I can't remember I

13 met Mr. Dorfman. There is an article and I said it.

14 Q Prior to your meetings with Mr. Becker in February

15 at which the terms of the merger were fixed, had you had any

16 discussions with investment bankers about the standards which

17 should be applied in evaluating the Schenley shares?

18 A I don't remember any.

19 Q Did you have any discussions with any attorneys

20 about the standards which should be applied?

21 MR. SILVERMAN: If your Honor please, I don't know

22 whether my friend is getting involved in an attorney-client

23 privilege.

24 MR. ZULACK: I am asking a yes or no question.

25 I'm not going to go beyond that.

A I have no recollection.

Q After the terms of the merger were announced, did the Glen Alden Board of Directors appoint an investment banker to advise Glen Alden on the fairness of the terms of the merger?

A I don't recall whether Glen Alden did or not but the Schenley board, because of its peculiar position as being almost like a subsidiary board, although there were a number of very independent people on the board, did request that the terms of the merger will be reviewed and approved by, or passed on by an investment banking house.

Q I'm asking in particular if the Glen Alden board retained anyone to the best of your recollection.

A I answered in particular that I have no recollection.

Q Would it refresh your recollection if I showed you the minutes of the Glen Alden meeting which purportedly retained an investment advisor?

A I will be more than happy to look.

Q I show you a copy of minutes of the Glen Alden board meeting which have been presented to us. They do not show the date which has been blocked out but I believe the date is 5/21/71, which I hope we can verify.

MR. SILVERMAN: What exhibit are you talking about?

MR. ZULACK: The exhibit is Exhibit 54. And there is a resolution on page 14, the second one.

MR. SILVERMAN: Did you denominate these as the minutes of a board meeting?

MR. ZULACK: Yes.

MR. SILVERMAN: And that's Exhibit 54?

MR. ZULACK: Exhibit 55.

MR. SILVERMAN: What page of that exhibit?

MR. ZULACK: Page 14.

A It is very possible and I don't remember whether we did or did not retain Loeb, Rhodes. This was -- this resolution is a blank authorization to hire an investment banker.

Q Would it refresh your recollection if I mentioned the name CBWL-Hayden, Stone as an investment banker which advised Glen Alden? It would not?

A Both Loeb, Rhodes, CBL or as you call it CBL Carter Berlin, Allen & Co., sometime or another Bear, Stearns, couldn't Loeb have all acted from time to time as advisor. I can't recall any specific.

Q With respect to the 1972 merger with Rapid-American and Glen Alden, did Hayden, Stone write an investment report which included an evaluation of the value of the Schenley stock?

2 MR. SILVERMAN: Objection, your Honor. This is
3 1972 merger and we are concerned with a 1971 merger.
4 THE COURT: How is that relevant?
5 MR. ZULACK: Your Honor, there was a report written
6 by the same investment banking firm for the 1971 merger and
7 a later 1972 merger. The 1972 report tracks the 1971 report
8 word-for-word except in a few minor changes and one of the
9 changes is that the difference in valuation is that $29 is
10 given to the shares in 1971. $34 is given to the shares in
11 1972 and $100 million came out of Schenley in the meantime
12 and the purpose of the second report is to show essentially
13 the bad faith of the first report. There is almost no
14 difference in the reports except one does use later 1971
15 figures.
16 MR. SILVERMAN: If your Honor please -- have you
17 ruled on it?
18 THE COURT: Unless you have something -- I over-
19 ruled the objection.
20 MR. SILVERMAN: If your Honor please,may I pursue
21 it for just a minute. The Carter Berlin opinion in '72 does
22 not concern this merger. There was no opinion set forth in
23 the proxy statement and, therefore, the opinion in the proxy
24 statement is a Bear, Stearns opinion for -- I beg your pardon
25 -- forgive me, Allen & Co. set forth in the '71 proxy

2 statement. Nothing was disclosed to the shareholders with
3 respect to the CBWL analysis in '71 and the fact that they
4 may have changed their analysis by '72, a year later, is,
5 I suggest, irrelevant to any issue in this case.
6 THE COURT: Well, it may be. I will take it at
7 this point.
8 MR. LEVIN: If your Honor please, I would suggest
9 that there may be a multitude of reasons, certainly not on
10 the record, between 1971 and 1972 which might or might not
11 justify any security analyst changing his position, so I
12 don't really know what it is that we are admitting in
13 evidence. I don't know what relevance this has to any of the
14 issues of this case. I think they can subpoena Carter Berlin,
15 put him on the stand and ask them but these speeches by
16 counsel in asking a witness who never saw a report it seems
17 to me is entirely irrelevant.
18 MR. ZULACK: Your Honor, the only reason I was
19 asking these questions to Mr. Riklis is to just establish that
20 this particular firm was hired. I think the report will
21 speak for itself.
22 THE COURT: Then you are withdrawing the offer of
23 the exhibit --
24 MR. ZULACK: No, I am not withdrawing the offer
25 of the exhibit.

2 THE COURT: Why don't you and that will simplify
3 matters at this point. I will reconsider it on a later offer
4 under perhaps a more auspicious foundation.
5 MR. ODELL: Your Honor, may I say this. One of
6 the witnesses that's been subpoenaed is a witness from this
7 firm. The report on its face says exactly what they did.
8 Who hired them --
9 THE COURT: I know but the objection has been
10 raised here that there is really no foundation. Mr. Levin
11 made the objection that there is no foundation for showing
12 the basis for the opinion. So I will sustain the objection
13 on that basis.
14 MR. ZULACK: Your Honor -- all right.
15 Q Do you deny that Glen Alden Corporation hired
16 CBWL-Hayden, Stone to advise Glen Alden Corporation with
17 respect to the 1971 merger?
18 A Mr. Zulack, I do not deny and I did not admit.
19 I said I had no recollection.
20 Q What about 1972, same answer?
21 MR. SILVERMAN: Objection.
22 THE COURT: You have no recollection?
23 THE WITNESS: I have no recollection.
24 Q Mr. Riklis, I appreciate we touched on this point
25 before but I would like to ask you one short question which

we were discussing yesterday and that is, in your opinion did Glen Alden have the ability to borrow $75 million to finance its tender offer in 1971 if it did not have the money which it received from the purchase by Schenley of the Glen Alden debentures?

A Start from the beginning. Would you repeat the question, please.

THE COURT: Read it back.

(Question read.)

A Maybe yes, maybe no. I will repeat what I said to you yesterday. Glen Alden had no problems financing or refinancing any of its loans with the banks. The $75 million was not entirely, to the best of my recollection, for the purchase of the stock and the tender offer. A part of it, a good part of it, which is almost fifty percent of it, was used to repay the insurance company loan of -- the name of the insurance company in Boston -- John Hancock.

Q Do you know when that -- was that loan for John Hancock prepaid?

A It was prepaid, yes.

Q What was the reason for prepaying the loan?

A There were a number of reasons for the prepayment of the loan of John Hancock. We found them quite unacceptable as partners in our company in connection with the merger of

Schenley and Glen Alden when they have -- because we needed permission, they have forced us to increase our interest rates and pay off part of the loan. We did not think that that was an acceptable relationship between an institution and ourselves.

Q What reason did they give for increasing the interest rate?

A They have no reasons. If you dealt with insurance companies, you know if you come to them for a waiver or any kind of a request of any sort, they always find an opportunity to put the pressure on.

Q Did they make any requests as to the amount of net working capital that Schenley must have?

A They may have made. I don't recall any but I'm saying that we found the experience of the relationship very unacceptable.

Q Did the prepayment have anything to do with the fact that you wanted to eliminate their right under their warrants to purchase Glen Alden stock?

A We just wanted to eliminate John Hancock from our balance sheet.

Q Mr. Riklis, I show you a copy of the 1972 proxy statement of the Glen Alden Corporation dated October 6, 1972 and I refer to page 9 of the proxy statement, paragraph 9,

which states that Hayden, Stone was retained to act as investment advisor --

A Your Honor, you want me --

Q -- to Rapid-American and ask if, in fact, Hayden, Stone was retained by Rapid-American to write that report?

A I accept that.

MR. SILVERMAN: If your Honor please, I object to the question with respect to the 1972 proxy statement since we are not trying any issue at that time.

MR. ZULACK: May I ask two more questions before you rule on the objection, your Honor?

THE COURT: All right.

Q The last sentence of that paragraph states that Hayden, Stone was also advisor to the Board of Directors of Glen Alden in connection with the merger in 1971 of Schenley with a subsidiary of Glen Alden and in connection with a sale of Glen Alden's textile division referred to item 7 above.

Do you accept that?

A I do. You showed --

THE COURT: You do, period.

MR. ZULACK: Your Honor, I offer first a copy of the 1971 Hayden, Stone affidavit which was submitted in the case of David Green vs. Schenley Industries and refer you to the fact that, in paragraph 3, that vindicates that Glen Alden

2 Corporation retained Hayden, Stone to evaluate and report upon
3 the proposed merger of Schenley Industries with Glen Alden.
4 THE COURT: Can we stipulate that that's in
5 that exhibit?
6 MR. SILVERMAN: Yes, I have no objection to it
7 except the relevance objection.
8 THE COURT: You have no objection to the entire
9 exhibit?
10 MR. SILVERMAN: That is correct.
11 THE COURT: It will be received.
xx 12 (Plaintiffs' Exhibit 46-B received in evidence.)
13 MR. ZULACK: Now, your Honor, I offer in evidence
14 a report by Hayden, Stone dated October 6, 1972, entitled,
15 "Analysis of the Proposed Merger of Rapid-American Corporation
16 With and Into Glen Alden Corporation," and refer your Honor
17 to the section which evaluates Schenley -- the Schenley
18 stock owned by Glen Alden.
19 MR. LEVIN: I would object, if your Honor please.
20 I would like for it to be established that the reports that
21 are now being offered came to the attention either of the
22 witness or of the Board of Directors of Glen Alden.
23 THE COURT: I will sustain an objection to this
24 exhibit at this time.
25 MR. ZULACK: Your Honor, may I be heard, on what

grounds, your Honor, on grounds of relevancy?

THE COURT: There is no foundation laid for putting this opinion in evidence, certainly not on your direct examination of this witness on the present state of the record.

MR. ZULACK: May I be heard on that, your Honor?

I believe under Sections 801(d)(2)(c) and (d) of the Federal Rules of Evidence, admissions by the agent of a party opponent are admissible if they are not hearsay. The only foundation that has to be laid --

THE COURT: That was not the problem. It is a question of the time frame you are talking about and what relevance it has on the issues a year and a half earlier.

MR. SILVERMAN: There is a further part of that objection. I will represent to the Court that in a deposition which my friend, Mr. Gluck was involved, in which Hayden, Stone was asked whether that '72 report had ever been given to the Board, they said it had not. Now, that is in a different case and therefore --

THE COURT: It does not become an admission.

MR. SILVERMAN: It becomes nothing. They are an investment banking agency in any event and not an agent.

THE COURT: At this point I will sustain the objection.

2 MR. ZULACK: May I please be heard on it because
3 I think it is an important point.
4 THE COURT: Are you bringing a Hayden, Stone man
5 here?
6 MR. ODELL: Yes, we have subpoenaed him. He will
7 come and say he prepared this report.
8 THE COURT: Unless there is some connection
9 between the corporation and some relevance in the time frame--
10 MR. ODELL: He was hired by Glen Alden.
11 MR. SILVERMAN: Not Glen Alden.
12 MR. ZULACK: I would like to be heard if I may.
13 I think there are two inquiries, evidentiary inquiries here.
14 The first inquiry is whether or not it is an admission. If
15 it is an admission, then the second inquiry is, is it
16 relevant. As to the first inquiry, I believe that 802(d) --
17 excuse me, 801(d)(2)(c) and (d) are dispositive. The rules
18 under (c), it is a question of whether or not an agent of a
19 party opponent has any speaking authority. Under (d) it is
20 a question of simply whether or not this person was hired
21 to and said something within the scope of his employment.
22 Whether or not the principal ever saw the report, whether it
23 is an inter-company report I think have been clearly deter-
24 mined under the revision of the Federal Rules to make it
25 admissible on those grounds.

In the background of that, your Honor, if a truck driver was hired and he said that he was hit in an accident or he was driving fast, it used to be, well, was he authorized to make this statement and the rules were changed to say it doesn't matter whether he was authorized to make the statement. Was this within the scope of his employment to drive the truck and I think the rules are exactly the same here. Was it Hayden, Stone's responsibility to make a report. Were they hired to do that and once they were hired to do that, and we can prove that, I think we have in the proxy statement, the document is admissible.

The next question is whether or not it is relevant. The reason we think it is relevant is because you have to see both reports, your Honor. As to Schenley it is a word-for-word tracking of the 1971 report with very minor exceptions. It is a markup. And that I believe in looking at both reports what we are talking about is, is the 1971 report a valid report. Is it a good faith report. And I think you can make that determination in light of reading a later report. What the value of the stock was in 1972 I admit is not relevant to this lawsuit. What's relevant is does that report shed light on what the value of the stock was on June 17, 1971.

THE COURT: Are you urging and is it the fact --

let's get the fact established first. Hayden, Stone is engaged to make a report in '72.

MR. ZULACK: And in '71. The same company. Different name. Same company. They changed their name.

THE COURT: They do not show the report to anybody?

MR. ZULACK: They don't show the report to anybody. It is still an admission.

THE COURT: You say that that becomes -- the report that you can hand around the neck of the person who engaged them, even though they never showed it to that person?

MR. ZULACK: I'm saying that -- exactly, your Honor, because --

THE COURT: Off the top of my head, I don't agree with you at all but let me have a look at the report.

MR. LEVIN: If your Honor please. There is an additional ground. If everything counsel said is true, it would impact on a report that might deal with fact, not with opinion.

THE COURT: At this point I will sustain an objection and I'll give further consideration to it.

MR. ZULACK: May I make one final statement on your last comment?

I believe that sub-division (d) of 801(d)(2) was

fact upon your judgment was Mr. Gluck's representation that the Board has never been informed of this report. The proxy statement says the investment banking firm of Hayden, Stone, Inc. has acted as advisor to Rapid in connection with the proposed merger and has informed Rapid that in its opinion the terms of the proposed merger are fair and equitable to Rapid and the holders of Rapid stock and to Glen Alden and the holders of Glen Alden stock. So I think that that is a more powerful statement than Mr. Gluck's and Mr. Silverman's representation of the fact it was never shown.

THE COURT: Do you change your statement about the facts, then, that I asked you to make earlier? I said was it ever shown and you said no.

MR. ZULACK: I didn't say that. I said I represented Mr. Silverman's representation until I saw the proxy statement. For purposes of argument I accepted it.

THE COURT: I think we better clear this up in a competent fashion by some witness who knows what he is talking about. If you are going to bring somebody from Hayden, Stone, let's take it from there, right?

MR. ZULACK: I have no more questions, Mr. Riklis. Thank you very much.

MR. LEVIN: Your Honor, I have about five minutes of questioning.

CROSS EXAMINATION

BY MR. LEVIN:

Q Mr. Riklis, you testified yesterday that in connection with the price Glen Alden paid to Rosenstiel for the Schenley shares, that you over-reached. Will you please tell the Court what you mean by the word "over-reached?"

A I thought I did in the sense that I have overpaid.

Q You testified in words or substance --

A But I said it was my opinion.

Q That's what you meant by the word "over-reached," overpaid; is that correct.

A Yes, sir.

Q You testified in words or substance that when you were negotiating for the acquisition of the Schenley stock, that you envisioned that under the control of Glen Alden there would be a better utilization of assets and a better return on invested capital; is that correct? You so testified, did you not?

A I did. I said that I believed in the management and I thought if we changed one person on top we would be able to have the same management produce a higher return on invested capital which included the whole spectrum.

Q Mr. Riklis, did you at any time up until the present instruct or direct anybody connected with the Schenley

2 management to dispose of any capital asset owned by Schenley?

3 A Well, I did. I was very much involved in the

4 disposition of the wine business and I did instruct that this,

5 I thought, should be -- I mean when I say instruct, we don't

6 issue a dictum, I think is the word, and say, you go ahead

7 and do that. But I did visit the wine business with the

8 permission of Lew Rosenstiel before the merger and -- before

9 the acquisition, and I did feel that it was a useless asset,

10 a wasted effort.

11 Q Was the wine business, in fact, disposed of?

12 A Yes, it was.

13 Q To the best of your recollection at what price

14 was it disposed of?

15 A I don't recall, it is 10, $12 million.

16 Q If I were to suggest to you that our investigation

17 indicates that it was $14 million, would you accept that, sir?

18 A I would, with the exception that we did not

19 get all the money in cash. We got paid over a period of time.

20 It is a question what is a note paid over a period of time

21 at what interest. We were not paid cash. We had to wait

22 for our money, so my recollection of the value was that it

23 was approximately $12 million.

24 Q And with the exception of the disposition of the

25 wine business, you did not suggest, direct or instruct the

disposition of any other capital asset of Schenley; is that correct?

A Give me the period of time.

Q At any time between 1968 through the merger of Schenley --

A That is correct.

Q Did you at any time during that period suggest, direct or instruct anybody associated with Schenley to dispose of inventory other than in the normal course of business?

A No, and that includes Mr. Becker who is both my Vice Chairman and Chairman of the Board of Schenley.

Q Did you at any time during that period suggest, instruct or direct that there be a revision or alteration or modification of the policy of the company with respect to the receivables?

A None with the exception of what I mentioned yesterday as a general policy of tightening up on both the granting of credit and the carrying of inventories.

Q How then did you expect and anticipate that there would be under your management the better utilization of assets and the better return on invested capital?

A I don't understand the question, Mr. Levin.

Q You have testified, sir, that you envisioned in terms of what Schenley would do under your management, that

there would be the better utilization of capital and a better return on invested capital; is that correct?

A Yes, but there is a tremendous difference, Mr. Levin, between expectations, one visions --

THE COURT: The question is how did you expect this to come to pass?

A I expected to be in a position to discuss with the management the thoughts that I have already expressed. That the excess inventories will be disposed of, the business will be improved, that the assets that are not producing the kind of income will be sold.

Q Is it fair to say, Mr. Riklis, that it was your expectation that the management of Schenley operating in a normally efficient manner would effect the results that had been expected?

A I do. Otherwise we will change the management.

Q Looking at the -- I know that you have a reluctance, Mr. Riklis, to become involved in personalities but I think that the Court is entitled to the facts. You looked at Schenley historically. What was there that you could look forward to in terms of the future that would be changed which would result in the achievement of your expectations?

A I've already been examined on that. I felt that the attitude of a 75-year old man as compared to the attitude

of a 45-year old man are different and as my attitude today over 50 is different than when it was less than 45. I felt that Lew Rosenstiel at that time, at the age of 75, was a hindrance to the corporation's growth, that the policies would be different than would be the policies I thought we would be in a position to execute. I felt that it was like, and I mentioned there was a horse with blinders and I wanted to take the blinders off the horse. I felt the management that existed under Mr. Rosenstiel was very good, and as a matter of fact, it continued for the next seven or eight years.

Q Mr. Riklis, I have two more questions with respect to one other subject that I would like to clear up. Did you at any time from 1968 through the middle of 1971 when the merger of Schenley and Glen Alden was considered feel or receive any pressure from any of the banks or lending institutions with which Glen Alden was doing business with respect to the servicing of debt or the repayment of debt?

A None whatsoever.

Q Did you at any time have any doubt as to the capacity of Glen Alden to role over, replace, refinance any of its debt upon the maturity of any debt?

A We had no problems.

Q And you had no doubts?

2 A Me personally or the --

3 Q Yes.

4 A I can't recall. None very substantial, this for

5 sure.

6 Q Did you have any doubts?

7 A I can't recall. I'm sure I must have had some

8 debts.

9 THE COURT: Debts or doubts?

10 A Oh, doubts? I thought he was talking about my

11 debts.

12 Q Did you have any doubts about your ability to

13 refinance?

14 A No, I had not. As a matter of fact you will find

15 almost invariably until the past year or so that every annual

16 report at the end thanks our banks and our employees and our

17 suppliers for their cooperation and attitude.

18 MR. LEVIN: I have no further questions.

19 MR. SILVERMAN: No questions.

20 MR. MANNING: No questions.

21 MR. SEASONWEIN: No questions.

22 REDIRECT EXAMINATION

23 BY MR. ZULACK:

24 Q Did you suggest or instruct anyone in Schenley's

25 management to institute a program in 1968 to generate cash?